THE COURT: All right. Counsel.

MS. CLEMENT: Yes.

TESTIMONY OF

KATHRYN LOCATELL, Witness called on behalf of the Plaintiffs,

DIRECT EXAMINATION

By LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of the Plaintiffs:

Q Dr. Locatell, could you please describe your education and training for the jury?

A Yes. I, um, did my undergraduate work at Clark University in Worchester, Massachusettes and graduated from there with a bachelor's degree.

Then I went to medical school at the University of Massachusettes and got my medical doctor degree, M.D.

And from there I came to California and did my residency training in internal medicine at UC Davis Medical Center. When I completed my training I became board certified in internal medicine.

Q Do you have any, um, additional, um -- oh, excuse me.

Are you board certified in geriatric medicine?

A Yes.

Q What has your professional experience been since completing your training, Dr. Locatell?

A I went to work for Kaiser in Sacramento and I was a general internist, busy office practice, busy hospital practice. And I stayed at Kaiser for almost eight years. And about, um, probably five or six years into working at

Kaiser I noticed that the majority of my patients were elderly and I had an interest in geriatrics already. I was able to take the board certification in geriatrics based on my practice experience and so I did that. That was in 1994 I became certified in geriatrics medicine too.

And at that point I, um, put together a proposal at Kaiser for the Department of Elder Care Services and this was a new model of taking care of older people, um, in nursing homes and in the hospital and we also had a clinic for frail elderly.

Um, from Kaiser I spent a brief period of time, about nine months, at Sutter with Sutter Senior Care, which is a model program, all-inclusive care for the elderly, and that was primarily community based but we did have some in residential facilities and some in hospital.

Then I joined the faculty at UC Davis as a clinical faculty member full-time teaching and seeing patients. And at UC Davis I also put together a service where we would see individuals in the hospital and follow them in the nursing home and then follow them after they left the nursing home, whether they went to assisted living or back to their own homes. And we also had a house call practice at UC Davis, so I made a lot of house calls out in the community to frail elderly people primarily.

Um, in 1998 I, um, became self-employed and I have been self-employed ever since. I had, um, become a nursing home medical director when I was working at UC Davis, so I continued to do that and I had a small practice, a house

call practice where I would see people in the home, in their own homes, whether that was a nursing home, assisted living, or a private residence. So I continued to see those patients, and I did also, um, continue the Hospice work I had been doing at UC Davis. So I would have a small practice, probably 20 to 30 patients.

And then I started doing forensic work and consulting on medical/legal cases like this one. I had also started to do some government work, um, and this was in the late '90s. And since I became self-employed, um, my practice has changed quite a bit. I did spend some time as a Hospice medical director. Um, I continued the medical directorship of the nursing home up until that point and that was about early 2006.

Then in 2007 I had been working with the State of California inspecting nursing homes and doing forensic analyses of cases of suspected elder abuse. So I started doing that more. And then also in 2005 I was asked to start inspecting nursing homes for the United States Department of Justice and went and visited nursing homes in numerous states in the country to evaluate the quality of care.

And that takes us pretty much to the present day I think.

Q How -- how many patients have you attended in residential care facilities for the elderly or assisted living facilities?

A Over the years, hundreds.

Q And what type of residential care facilities for the

elderly have you visited?
A I have visited small facilities of only a handful of residents up to large facilities with 100 residents or more.
Q Now, I understand you have served as a consultant to attorneys for the Department of Social Services community care licensing. Could you please describe that for the jury?
A Yes. Um, these were actions by the Department of Social Services against residential care facilities, against their license, so I was engaged to evaluate what happened to the individuals. It was a bad outcome for these individuals, and the Department of Social Services asked for my input about what went wrong and I gave them that input. And I think there were, um, a couple three cases, um, in the -- maybe ten years ago or so and then -- and then last year I had another case that they asked me to become involved in with of a person that died in a residential care facility.

And I -- I didn't -- I was never called to testify on their behalf because I believe the settlements were agreed to in each of those actions.
Q Would it be correct to say that you're very familiar with the standards of care for residential care facilities for the elderly or assisted living facilities?
A Yes.
Q Are you familiar with the, um, regulations and laws that govern those facilities?
A Yes.

Q And can you tell me, um, what is forensic geriatrics?
A Well, forensic work in general is analyzing events that happened in the past and trying to determine what happened. So it's an analysis that's looking back, what happened in this case, in a medical case. You may have heard it discussed in association with criminal cases. And the specialty, so to speak, of forensic geriatrics is -- is a relatively new one.

Um, it's analogous to forensic pediatrics. And for decades now in child abuse cases pediatricians are called on to evaluate what happened and to give testimony in legal proceedings and to provide other types of expertise when looking at what happened.

Q And can you tell the jurors how you got involved in forensic work?
A Um, I was first asked to look at a case when I was employed with the, um, UC Davis School of Medicine as a faculty member. I was asked to look at the case and look at the patient actually on behalf of a defendant nursing home in a civil case like this one and, um, that's actually where I met Ms. Clement. Um, she took my deposition in that case.
Q Your work in consulting on civil cases like this one, how long do you consult on -- how often do you consult on behalf of the plaintiffs, or the person bringing the case, um, versus the defendants, the -- the facility?
A Most of the time I'm asked to look at cases for plaintiffs and/or prosecutors. Um, there have been -- you know, I have estimated at various times, you know, five

percent of the time I'm asked to look at cases for defendants I would say.

Q And --

THE COURT: Okay. We are going to need to stop at this point.

MS. CLEMENT: Sorry. Thanks, Judge.

THE COURT: I apologize.

MS. CLEMENT: That is all right.

THE COURT: Ladies and gentlemen, leave your notebooks on the chairs. Remember the admonitions. I will see you back at 1:30.

(The following proceedings were held in open court, outside the presence of the jury:)

THE COURT: You can step down. Thank you.

Okay. Besides Dr. Locatell --

MS. CLEMENT: Locatell.

THE COURT: -- Locatell, do you believe we are going to be getting to anyone else today?

MS. CLEMENT: Videos if we finish, yes.

THE COURT: Okay. All right. We will see you at 1:30.

MS. CLEMENT: Thank you, Judge.

THE COURT: We are in recess.

(Lunch Recess.)

(Court Reporter switch.)

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THURSDAY, JANUARY 31, 2013

AFTERNOON SESSION

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The matter of JOAN BOICE, by and through her Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE BOICE, and MARK BOICE, individually, Plaintiffs, versus EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS, Defendant, Case Number 34-2009-00063714, came on regularly this day before Honorable JUDY HOLZER HERSHER, Judge of the Superior Court of California, for the County of Sacramento, Department 45.

The Plaintiffs, JOAN BOICE, by and through her Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE BOICE and MARK BOICE, were represented by LESLEY A. CLEMENT, Attorney at Law; VALERIE DAWSON, Attorney at Law (not present); ASHLEY BAIRD, Attorney at Law; and SEAN LAIRD, Attorney at Law.

The Plaintiffs, ERIC BOICE, NANCEE BOICE and MARK BOICE were present.

The Defendant, EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS, was represented by BRYAN R. REID, Attorney at Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS, Attorney at Law.

Also present on behalf of the Defendant, EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E. McKINNON, Vice President of Legal Affairs; LISA HULSE, Vice President Quality & Risk Management; and HOLLY A. FORD, Trial Consultant.

(The following proceedings were then had in open court, in the presence of the jury.)

THE COURT ATTENDANT: All rise.

Department 45 of the Sacramento Superior Court is now in session. The Honorable Judge Judy Hersher presiding.

You may be seated.

THE COURT: All right. Thank you.

We can continue.

MS. CLEMENT: Thank you, Judge.

TESTIMONY OF

BY Kathy LOCATELL, M.D., a witness called by the Plaintiffs:

DIRECT EXAMINATION (resumed)

BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of the Plaintiffs:

Q. When we broke for lunch, I think the question pending was: Why have you worked predominantly for the prosecution or plaintiffs?

A. Primarily, because I'm mostly almost always asked to review cases for either the plaintiff or the prosecution.

Q. Do you advertise your services?

A. No.

Q. Have you ever advertised your services?

A. No.

Q. What type of government consulting have you done?

A. I've done a number of things. I think the first one involved a particular nursing home where there were quite a

few bad outcomes among residents. And I evaluated those cases for a U.S. Attorney's Office. And I'm not sure what the action was that they were pursuing, but that was probably 2000, somewhere around there.

In -- late in 2002, I started working with the State of California, Department of Justice, Bureau of MediCal Fraud and Edler Abuse. And I inspected four nursing homes in the state to evaluate the quality of resident care, and participated in some other investigations of these nursing homes that were part of a chain. And from there, I was asked to look at other cases of suspected elder abuse and to analyze the medical records and, if needed, to provide testimony.

In 2005, as I mentioned already, the United States Department of Justice. And it was -- a team of us actually went to the nursing homes and inspected all aspects of the home, the resident care, the policies and procedures, and those inspections would last a week at a time. And then we would go back and follow up and see if they were making improvements.

2007, Operation Guardians is the name of the program. And these are surprise inspections for the State of California, Department of Justice. Show up and evaluate all aspects of resident care with -- again, with a team.

I've also looked at some criminal cases in other states, New Mexico, Washington, and Virginia.

And currently, I have some other work I'm doing with the U.S. Department of Justice that involves false claims.

Q. What does that mean?
A. False claims for payment. So bills submitted to Medicare primarily for services that either were worthless or were not provided. So I analyze patient records and give reports to the government.
Q. And have you worked on criminal cases for the prosecution in the state of California?
A. Yes.
Q. How much time in your total work time do you spend testifying?
A. Very small amount, thankfully. It's really a minor part of what I do, actually coming in and testifying. I think I've testified in probably about 40 some-odd trials since I've been doing this. And I think five of those involved criminal prosecutions for elder abuse.
Q. What different types of testimony have you given?
A. In addition to the courtroom testimony, I've testified before government bodies. I testified before the United States Senate, Special Committee on Aging, about the quality of care in California nursing homes.

I testified before a joint session of the California Legislature, concerning long-term care issues. And then I testified again before the U.S. Senate Finance Committee, and then several more times before the California Legislature.

MS. CLEMENT: At this time, your Honor, the plaintiffs would seek to qualify Dr. Kathy Locatell as an expert in this case.

THE COURT: An expert in the area of?

MS. CLEMENT: In the area of elder abuse, Title 22, the operation of residential care facilities for the elderly, suspected neglect and abuse and actual neglect and abuse of elders, mandated reporters.

THE COURT: Any objection?

MR. REID: I'm not sure she's laid a foundation for all those areas.

THE COURT: Which one would you be objecting to?

MR. REID: Title 22. Operations of RCFEs.

I agree she's a medical expert in geriatrics for sure.

THE COURT: Let's break this down.

You are asking that she be recognized as an expert in the area of elder abuse.

Is there any objection?

MR. REID: Medical elder abuse, no, your Honor.

THE COURT: Elder abuse.

MR. REID: As it's defined in this case, no.

THE COURT: Okay. How about Title 22?

MR. REID: No objection, with the understanding of the Court's rulings on who talks about what the law says.

THE COURT: Okay. And operations of residential care facilities for the elderly?

MR. REID: I do not have an objection to that.

THE COURT: Okay. Was there anything else, Miss Clement?

MS. CLEMENT: I didn't think so.

THE COURT: All right. Then the Court will recognize the witness on the stand as an expert in elder abuse, Title 22, residential care facilities for the elderly.

MS. CLEMENT: And, of course, your Honor, as a medical expert.

THE COURT: And as a doctor, medical expert.

MS. CLEMENT: Thank you, your Honor.

Q. (By MS. CLEMENT) Can you explain for the jury what an assisted living facility is, or a residential care facility for the elderly?

A. Yes. This is a care facility, and it's one piece of the spectrum of the types of care facilities we have available to take care of disabled adults and disabled elderly individuals.

Personal care is provide, but not medical care. And thus, it is what is called "a social model" as opposed to "a medical model." And medical models are healthcare facilities. Residential care facilities are not. They're licensed differently, by different departments in the state, and they have different requirements to meet for their licensure.

Q. So is one of the main differences how they are licensed and regulated?

A. Yes.

Q. And what can you tell us about those -- the difference in the social model of a residential care facility for the elderly?

A. The social model, or the residential care facility for the elderly, is to provide shelter, board, personal care, personal necessities, and care, which is personal care, basic assistance with the activities of daily living. In general, there's no requirements for any of the staff to be licensed in anything. They're certified to be administrators. But the staff themselves need training, but not a license as a professional of any kind, or a paraprofessional.

Q. And you're familiar with the Title 22 regulations governing residential care facilities for the elderly?

A. Yes.

Q. And what do they say about health and medical care in these facilities?

A. The facility has to continuously observe the resident. And the facility is required to report changes in the resident's observable condition to the patient's family or interested person, as well as to the doctor. And they have to take the name of the doctor, who is the person's doctor. And they're required to report these changes that they observe. And they're responsible and accountable for observing for changes.

Q. Are there any restrictions or prohibitions on health conditions that residential care facilities or assisted living facilities can accept and retain?

A. Yes. Because there are no licensed healthcare providers in these facilities, the law is very clear, as I understand it, and as I read it, and it makes sense that

you don't want people with medical problems that go beyond the scope of personal care in the homes.

So there are certain conditions that are outright prohibited, that you may not allow in a residential care facility. One of those is if someone is bedridden. And if someone is bedridden, that means they're disabled to the extent that they can't turn themselves over in bed, in other words, to try and get out of bed, or they need assistance to get out of bed. And this is someone whose disabilities would require a lot more care than the typical activities of daily living that are provided in these homes.

Q. Are there any other prohibitions?

A. Yes. There are quite a few actually. And, you know, the other one -- these are what we'll be talking about in this case, dermal ulcers. They are restricted if they're healing in Stage I, and II, there's a minor wound. That's restricted. And it's defined under what circumstances you can keep someone with an early dermal ulcer.

And then prohibited altogether are any pressure sores or dermal ulcers, and they're kind of used synonymously, and we can talk about that. But if it's a higher than a partial thickness break in the skin, that is, it goes through the full thickness of the skin, that would be a Stage III or a Stage IV. Those are prohibited in residential care facilities. Again, because if someone has that type of wound, they need skilled care on a regular

basis, and there are no licensed nursing or other professionals or paraprofessionals in these homes.

Q. Do social models focus on just room and board in providing healthcare?

A. They do not provide healthcare. They have to ensure that the resident is -- has access to healthcare when it's needed.

Q. Okay. And the difference between healthcare and personal care, have you explained that, or do you need to explain that further?

A. Well, there are a bunch of terms that are used. But "personal care" means the activities of daily living. These are things that we take for granted every day. We bathe. We groom ourselves. We eat. We move around. We take ourselves to the toilet. We get around from place to place in our home, or in our abode. So those are the basic activities of daily living. And when the older person is disabled, they may be mentally disabled, they may be physically disabled, but generally people need to go in these homes because they need some degree of assistance with those daily tasks. Otherwise, they would stay in their own homes or what have you.

Now, there are -- and I've been in these homes, places where the individual doesn't need much of any care at all. And they're not prohibited from going there if they don't need care. But if the facility accepts someone for care, then the care must be provided; personal care, not healthcare.

Q. Now, if a resident lives in a assisted living facility, how do they obtain healthcare services?
A. Any number of ways. Just like anyone, go to see your doctor in the office. Want to go to the emergency room, go to the emergency room. There are also healthcare entities that provide care that's needed in the home, if the person meets the criteria. So home health care. These are nurses, therapists, dietitians, social workers, a whole bunch of people that actually come to the home to provide the care, if the person is considered homebound.

There are also doctors who make house calls. So professionals can come into the home to provide the care, or the person can leave the home to go to the office or what have you.
Q. If new health issues arise for an elderly person living in a assisted living facility, what is the assisted living facility responsible for doing?
A. Well, first, they have to notice that there's a health condition, and they are required to observe the person for changes in health condition. Basic things that lay people would know, a fever, not eating, not moving around, a little bit more confused, or confused. Some kind of change that, with their basic training that they receive, they would be able to recognize.

And when they see a change, then they're required to notify the responsible party, the emergency contact. There are forms that are required to be kept by the State. The emergency contact information. *Who do we call? Who is*

your doctor? And so they have to call these medical providers and the family to make sure that the person gets whatever kind of evaluation that they might need.

Q. Is the facility responsible for bringing in skilled professionals?

A. No, not really, except if there's a condition that requires it. So this is where the regulations get to be fairly detailed. If someone has a dermal ulcer and it's Stage I or Stage II, that must be diagnosed by a professional, and the care must be provided by an appropriately skilled professional.

So these personal care providers haven't been trained to do wound care, so the facility has to make sure that individual gets the wound care somehow. And some people can go to a wound clinic. They could be taken to a wound clinic every day and get their wound care. And then others that can't go every day to the wound clinic would typically get home health care, with nurses coming and looking at the skin and supervising the interventions that the personal care providers are responsible for.

Q. Can the facility itself provide licensed skilled professionals in the facility?

A. It -- yes, they can. They're not required to, though. And if they -- again, if they accept someone for care, or they retain someone that needs that care, they're required to provide it.

Q. So having skilled needs, needs for -- by a skilled professional, doesn't necessarily mean that the person

can't live in an assisted living facility?
A. Correct.
Q. But there are some conditions which are either restricted or prohibited, according to the regulations?
A. Yes.
Q. So in this case, we've heard a lot about administering medications or assisting residents with medications.

Can you explain for the jurors what the difference is.
A. Yes. Administering medications means that whoever it is gives the person a cupful of pills, or a pill, whatever it is, and says, "Here, take this." That person that's getting them doesn't know what the pills are, doesn't know what the pills are for, can't say, "Where is my cholesterol drug?" These are typically people with dementia that may not understand or be able to look out for themselves. "What are you giving me in this cup?"

Whereas, if the person is not suffering from dementia and they know what pills they're supposed to be taking, they can verify that they're actually getting what they know they're supposed to get. And that is assisting.
Q. Is there anything that can go wrong when medications are administered by non-licensed caregiving staff?
A. Yes. Because, again, they're not nurses. They don't have much training in this at all. They may not know what the drugs are for. They don't know what the dose is supposed to be. They don't know what the side effects are.

They don't know what to watch for.

But if the person is knowledgeable about their own medications, the person can watch for themselves. And, again, when the individual has cognitive impairment from dementia, they can't do that.

Q. Can you tell the jurors what you've reviewed in this case and when you started doing that review.

A. Yes. The first -- very first thing I saw in this case were photographs of Ms. Boice. And they were taken at the nursing home, Foothill Oaks, when she left Emerald Hills.

I then reviewed records from Emerald Hills. I reviewed the medical chart from the nursing home, Foothill Oaks. I reviewed the doctors' records from Kaiser, both in Roseville, Dr. Awan, and her prior Kaiser doctors in Hayward, Kaiser Hayward.

I reviewed The Palms records. And I reviewed her death certificate.

Those would be the medical records that we have available in this case.

Then I've reviewed so many other things that have to do with the investigation of the case. And I've read testimony of the witnesses. I've read responses by Emeritus when they were asked questions by plaintiffs' counsel. So I've reviewed their responses.

And I've reviewed the exhibits, most of them, as much as I could, to the depositions, which is thousands and thousands and thousands of pages.

I've reviewed Emeritus policies and procedures.

I've reviewed staff schedules. Information about the staff, I've read their personnel files.

Q. Did I first contact you in this case in December of 2008, shortly after Ms. -- Mrs. Joan Boice moved to Foothill Oaks?

A. Yes.

Q. Have you read more than 60 depositions that have been taken in this case?

A. Yes.

Q. Okay. Are you aware of any harm that occurred at Emerald Hills due to the practice of having non-licensed caregiving staff administer medications to the residents?

MR. REID: It's overbroad and irrelevant as phrased, your Honor.

THE COURT: The question is, Outside the scope of Mrs. Boice's circumstances, what's the relevance for other people?

MS. CLEMENT: It goes to the defendant's pattern and practice, your Honor.

THE COURT: Well, I'd like you to start small and build up, please, so we know where we're going.

MS. CLEMENT: Okay. All right.

Q. (By MS. CLEMENT) Are you aware of harm that occurred at Emerald Hills regarding Mrs. Joan Boice as a result of medications being administered by non-licensed staff?

A. I do not know.

Q. Do you know of -- from your review of the records -- of harm that occurred to other residents based upon the evidence that you reviewed in this case?

MR. REID: Irrelevant, and 352. It lacks foundation.

MS. CLEMENT: I'll rephrase, your Honor.

THE COURT: All right. Thank you.

Q. (By MS. CLEMENT) Prior to Mrs. Joan Boice's admission to Emerald Hills, were you -- did you have -- have you reviewed evidence of -- let me ask you another question.

Did you review all the Department of Social Services' records of this facility?

A. Yes.

Q. Did you also review documents, including a letter from Mary Kasuba to Emeritus?

A. Yes.

Q. And those documents included instances related to medication errors prior to Mrs. Boice's admission to the facility?

A. Yes.

Q. Did you see that prior to Mrs. Boice's admission in September of 2008, harm that occurred to residents at Emerald Hills due to this practice of having non-licensed caregivers administer medication?

MR. REID: That's -- it's irrelevant and 352, your Honor.

THE COURT: Objection overruled.

THE WITNESS: Yes.
Q. (By MS. CLEMENT) Can you describe that for the jury.
A. Yes. A resident who was receiving a medication to treat heart failure did not receive the drug for a period of -- I believe it was six days. And this was shortly after, I believe, Mary Kasuba started working there. The resident went into severe heart failure and subsequently died.
Q. Was there anything done about that?
MR. REID: It's vague. Overbroad.
THE COURT: Sustained.
Q. (By MS. CLEMENT) In response to -- to your understanding, was -- Emeritus knew about this resident dying as a result of not receiving their heart failure medication?
A. Yes.
Q. Did you see any evidence that Emeritus took any action in response to that?
MR. REID: Your Honor, I object. I believe it's beyond the scope of her expertise. It's not relevant. It's not a subject of expert testimony. It goes to a -- well, it's 352.
THE COURT: With respect to notice, which is an issue relevant to this case, before and for a period of time afterward, it is relevant.
We're going to go into this just limited, Miss Clement. I don't want a great deed -- detail about

this other person's personal life.

MS. CLEMENT: Oh, yes.

THE COURT: Go ahead.

THE WITNESS: Yes. They conducted a pharmacy audit after this event at the facility.

Q. (By MS. CLEMENT) And was that pharmacy audit the small section of the 2007 CPR results that Mr. Budgie Amparo found?

A. As I recall, it was a stand-alone pharmacy audit that showed -- and I think numerous Emeritus management staff testified -- that the facility flunked it.

Q. If they're social but not medical models, why -- why would a facility like Emeritus Emerald Hills -- are they forbidden from taking care of people who have needs that could be met in a nursing home?

A. No.

Q. And how could they take someone who had higher needs?

A. Well, they need to show that they have a plan to take care of the person, and that they have sufficient staff to take care of the person, and that the staff had sufficient training to take care of that person.

So they're not required to accept anyone. But if they do, absent any prohibition or prohibited condition, they're required to provide the care that person needs.

Q. Is there a requirement that they be otherwise compliant with the regulations governing prohibited and restricted conditions as well?

A. Yes.
Q. What does sufficient staff mean in assisted living?
A. Sufficient staff may be sufficient in numbers. You have enough staff. So it could be numbers. It can be their sufficiency as caregivers. You may have a lot of them, but if they don't have training and they don't know what to do, you can't meet the person's care needs. They have to have supervision. The operator of the home has to make sure that the numbers of staff that are present are actually carrying out their duties. So sufficiency can be any combination of those things.

And then qualifications of the staff. And this would apply to the operators of the home and the nurse, if there is one. If the facility chooses to hire a nurse, then the nurse needs to be qualified.

In this case, the qualifications were set forth by Emeritus, not in Title 22. But Emeritus had it's own standards that it required of its management staff in the home.
Q. What about training of the staff? What's required there?
A. Title 22 requires that for people giving direct personal care to the residents, there needs to be ten hours of training. That comprises a number of topics, conditions that effect the elderly. There's a laundry list of things. It needs to be ten hours within the first four weeks. And that -- and that is exclusive of first aid. And there also must be first aid training, such as you would get from

American Red Cross. And that has to be done in the first four weeks.

Then annually there needs to be, I believe, four additional hours of basic training every year on the conditions of the elderly, so that the caregivers are trained on what to look for and, also, further training on the provision of the care that the residents need.

Q. Now, if a facility advertises as being -- providing dementia care, as Emeritus does, are there any additional training requirements?

A. Yes.

Q. And what are those?

A. The facility must provide six hours of dementia-specific training, including for health conditions that persons with dementia might be at risk for, like skin problems, six hours within the first four weeks of employment. And, again, four hours of annual training, I believe, in dementia care.

Now, it may be different. It may be eight. I'm not sure of the exact number. But the initial training, ten hours of the basic personal care training, plus six hours of dementia training, if the facility advertises that it has a special dementia care component.

Q. Okay. So 16 hours of training in the first four weeks, and then 12 hours annually, as the topics set forth in Title 22 for facilities that advertise dementia care?

A. Correct.

Q. And that's for all the caregivers?

A. Any staff who provides direct care to the resident. So that would include the personal care attendants, as well as any nurse, or any other individual who would actually be hands-on providing care.

Q. How about supervision of the staff, is that required under the Title 22 regulations?

A. Yes.

Q. And who is required to provide that?

A. Licensee.

Q. And in this case, who was the licensee?

A. Emeritus.

Q. Do you -- have you reached an opinion in this case whether Emeritus met the requirements for staffing of Emerald Hills while Joan Boice was a resident?

A. Yes.

Q. And what is your opinion in that regard?

A. My opinion is that the facility clearly lacked sufficient staff to meet the care needs of Joan Boice and, likely, other residents in the Memory Care Unit.

Q. And what do you base your opinion on that?

A. There are a number of things I base that opinion on. And we can start with numbers of staff. And the staff schedules show that the actual numbers of staff were not sufficient on numerous dates, shifts, days, during her residence. And it was really most striking in the month of November, when, on the p.m. shift, which is the afternoon shift, there would be times when there was only one staff person available to take care of all of the residents on

the Memory Care Unit, which is 17 -- 15, 16, 17, somewhere in there. And at least based on Joan Boice's care needs, one person would have needed to spend a lot of time just with her. And from what the caregivers have testified to, at least a third of the residents in the Memory Care Unit were like Joan Boice and needed that degree of hands-on assistance. So the numbers were missing, especially in November. And there were overnight shifts where there were zero staff on the overnight shift in the Memory Care Unit. So numbers were lacking.

Training was lacking. I didn't find but three of all the caregivers that took care of Joan Boice who had ever had any dementia training. There were numerous staff who had just been hired, no dementia training, no first aid training. Onboarding checklist, blank. Nothing to indicate that they had received even basic safety instructions when they were hired and assigned to take care of these individuals who clearly needed care.

The management staff hadn't had the dementia training. So the person that was made the director of the Memory Care Unit had never had the dementia training as of the date Joan Boice was residing at Emerald Hills.

Q. What about -- did you notice in the staff schedules that there were nights where there were only two people in the entire building?

A. Yes. No one on the memory care, two people on assisted living, which would have been about 60 residents.

Q. On the assisted living side?

A. Correct.
Q. Then plus the memory care, 15 to 17 residents?
A. Correct.
Q. And do you have an understanding that the Emeritus building is three stories high, with one elevator?
A. Yes.
Q. Did you find any evidence that Emeritus, the licensee, was inadequately staffed and there was lack of training and supervision before Joan Boice was admitted?
A. Yes.
Q. And what do you base that -- and what was your opinion in that regard?
A. It was. There were long periods of time with no nurse available in the building. Caregiver shortages. Med techs who were not adequately trained. And Mary Kasuba set forth her observations from the time she was there a year before Joan Boice. And caregivers that also took care of Joan Boice testified about this as well.
Q. Did you find any evidence that after Joan Boice left the facility that there continued to be inadequate staffing and training? And we're just limiting this up through 2010.
A. Yes.
Q. And what was the evidence you found on that?
A. Well, one thing that really struck me was that shortly after the executive director Nancy Cordova quit, in January of 2009, a resident in the dementia care unit fell, hit his head, and died. There was no executive director in

the building, and the person that was assigned to be the interim executive director was a high-up VP in Seattle. So there was no -- not even anyone on site to provide the supervision to the staff.

Q. And was that person Melanie Werdel, the Executive Vice President of Administration?

A. Correct.

Q. Did you look at evidence about staffing, training and supervision in other Emeritus facilities in California during this time frame?

A. Yes.

Q. And can you tell us what you found in that regard. And, again, we're limiting it to 2007 through 2010.

A. Recurring themes. Nurses promised to families who placed their loved ones there long periods of time with no nurses in the buildings. Turnover of direct-care staff. Turnover of executive directors. Turnover of the management layer that's supposed to be supervising the buildings.

Chaos and dysfunction is how I would characterize what I saw when I looked at the State of California and the -- and the swath of complaints and testimony, DSS findings, Department of Social Service findings. Really, frankly, shocking.

Q. What is the harm posed to elderly persons living in these facilities when the facilities are understaffed?

A. No one to observe them. No one to report when there's a change in their health status. No one to provide

the personal care they need to maintain their bodily integrity. Not enough help with eating. No staff to weigh them. No one to look at their skin. No one to supervise. No one that knows what to supervise for supervising. These things place these -- this vulnerable population at very high risk for bad outcomes, like what happened to Joan Boice and other residents.

Q. Do you have an opinion that Joan Boice was harmed by Emeritus' failure to adequately staff Emerald Hills?

A. Yes.

Q. We'll come back to that.

Now, let's talk a little bit about Joan.

Can you please explain Joan's health conditions to the jury.

A. Yes.

Q. Start with her medical history, if you would.

A. Yes. Joan was diagnosed with -- formally diagnosed with Alzheimer's disease in the fall of 2006. Her family had reported that she'd been showing memory problems for about a year before that. When she was diagnosed with Alzheimer's disease, there were some testing done of her cognition, that is, her intellectual functioning, and she scored on those tests in the mild range. This is the end of 2006, the beginning of 2007.

So she did have dementia. Alzheimer's disease is a chronic disease. It's a slowly progressive disease. And it generally takes anywhere from, you know, ten years on average from when it's diagnosed to when the person reaches

end stage. It's very slowly progressive, if you think about our former President Reagan and how long he suffered with that disease before he died. So it's a gradual loss of intellectual function and other function.

Apart from that, she had high blood pressure, and she was taking medications for that. She had arthritis of her spine. She had a compression fracture of one of her vertebrae in her spine. This is a common thing we see in older people in their seventies and eighties. And she was 80 at the time she was admitted to assisted living at The Palms in 2007. That compression fracture apparently happened in a fall about two months earlier. And compression fractures will heal. The vertebrae is lacking in calcium and it just kind of "ckkk" (sounding). And it's painful, it heals, and the person goes on. She was treated with pain medication for that.

She was falling at home. She had a history of maybe six falls, I think, in the six months before she was admitted to The Palms. And falling is a geriatric syndrome. We see it when people begin to lose their cognitive faculties, maybe when they're not as physically active from arthritis, or a compression fracture. Medications may cause them to have balance issues. And so falling is one of the things that made her frail.

She had some urinary, I believe, urge incontinence that she got a medication for. And I think she had one attack of asthma-like illness at Christmas time, but she didn't have any really -- any chronic lung disease. And

then she had impaired vision. She'd had a little bit of hemorrhage in one of her eyes.

Q. And what is the urge incontinence, what does that mean?

A. The bladder, with aging, and in women after child birth, becomes unstable. The muscles that coordinate, that help the bladder empty, kind of go a little haywire and the bladder all of a sudden says, *Time to go really fast.* And that's what urge incontinence is. You can't hold it because there's a strong urge.

Q. And is it your opinion that Joan Boice had Alzheimer's disease?

A. Yes.

Q. And what stage of the disease was she in when she entered The Palms?

A. Again, it appears that it was mild. We have some difficulty being very precise about stages of Alzheimer's disease. The test we use to evaluate where someone is in the disease, it's called a mini-mental state examination. And her score was 22 on two different occasions, at the end of 2006 and into 2007. And when you look at how we break down the scores, 26 to 30 is normal; 22 to 25 is mild; 18 to 21, somewhere in there, is moderate; 15 to 20, and then severe, and then an end stage.

So most, you know, clinicians -- clinicians will categorize it as mild, moderate, severe, or end stage. And she was mild, according to those cognitive tests.

Q. Did she ever have cognitive tests performed -- well,

let me ask you this: Those mini-mental state examinations, should those be performed by actual clinicians?

A. No. Anyone can be trained to administer that exam. It's 30 questions. It's not very complicated. But people do need to be trained. I saw that at The Palms. People tried to administer them to her, but they were never able to do it and so she didn't actually have a score. Zero. They said she had a zero score. But that was not correct.

Q. Does Alzheimer's disease cause death? And if it does, how does it?

A. It does not cause death directly. It affects what we call the gray matter and the connections between gray matter of the brain, which is the part where all your thinking happens. So when you reach end stage, you can live on with no intellectual function that's apparent at all. It doesn't kill you by making your heart stop or make you stop breathing. But what it does to you is that it puts you at risk for complications of being disabled from it. You may have very poor cognitive functioning but still be healthy. You may not have anything else wrong with you. You may be able to walk around, and take long walks, and go and chop wood or whatever. But that's not going to kill you.

If you become physically disabled in conjunction with your intellectual disability, then you're at risk because you can't communicate what your needs are. You become dependent on other people to provide care and to recognize when you're sick. And so you see people with

advanced dementia dying of infections, like urinary tract because they're incontinent, or they may develop pneumonia. They may not show the signs and they can complain of their symptoms because they can't communicate well. So they die of complications related to their disability, not to the Alzheimer's disease itself.

Q. Do you think that Alzheimer's disease caused Joan Boice's death?

A. No. It contributed, but it did not cause her death.

Q. Is there any evidence in this case that Joan Boice had a stroke at any time?

A. There is no evidence that tells me -- that I can say more likely than not she had a stroke at any time. There just isn't any. So it's an open question. I think there's some evidence that suggests she may have had a stroke at some time. We don't know when. There's no evidence really that we have that shows us that she had a stroke at this -- on this date, during this week, during this month. We know she was like this, point A, when she was admitted to Emerald Hills, and we know that when she left Emerald Hills she was at point B, all the way down here (indicating). We don't know what happened in between there because we don't have any record. There's no recorded observations until very late when she's already way down here (indicating).

Q. When you're discussing opinions in this case, are you making those opinions to a reasonable degree of medical certainty?

A. Yes.

MS. CLEMENT: And, Your Honor, can we have a stipulation that I don't have to ask that question every single time, add to that?

MR. REID: Sure. If it goes for me, too.

MS. CLEMENT: Oh, absolutely.

MR. REID: Yes. No problem.

MS. CLEMENT: Okay, It just saves a lot of typing --

MR. REID: With my experts, too.

MS. CLEMENT: Yeah, absolutely.

It just saves a lot of typing for Michelle.

MR. REID: Thank you.

Q. (By MS. CLEMENT) What are the risk factors for the development of pressure ulcers?

A. Pressure ulcers, like their name, are caused by pressure. So things that subject you to excessive pressure but you at higher risk. Classically, this is the turf of nurses. Nurses who take care of patients in hospitals own this part of medicine. Most doctors don't get training in it. The nurse who developed the risk factor scale that we use to apply to see if someone's at risk is a nurse by the name of Barbara Braden.

The Braden Scale, when you apply it to a patient, it will tell you whether they're high, low, medium, or very high risk. And the elements of Braden Scale, it's not Alzheimer's. It's not diabetes. It's not cancer. It's not high blood pressure. It is, Can you move around on your own? Are you awake and with the program? How do you eat and drink? Can you sense the need for your body to

shift weight if you're sitting in one spot for too long? Do you have incontinence? Is your skin constantly exposed to moisture from urine or stool due to incontinence?

And then friction and shear are forces that can cause pressure injury to the skin. And if you can't move around in bed on your own and somebody has to move you, they can cause friction and shear injuries to your skin if they drag you across the bed and move you around without using proper techniques. So those are the actual risk factors for the development of pressure sores.

Q. Have you done any -- other than your medical training that you had initially, have you done any additional study into the area of pressure ulcers?

A. Yes. I've reviewed pressure ulcers, the literature in pressure ulcers, what medical literature there is. And a lot of it is written by nurses. I've had to teach it. Because when I was on the faculty at U.C. Davis, I was teaching trainees. And pressure sores do tend to effect the elderly more than younger groups, because the elderly tend to be more disabled than young people. Young people can get them, too. Children get them. Babies can get them. So it's not a condition exclusive to the elderly, but you tend to see it more in elderly persons. So I had to learn it to teach it.

I also -- I'm interested in it. I had patients of my own that I needed to treat and manage. And I attended, I think, three different national pressure ulcer conferences put on by the -- kind of the gurus of pressure

ulcers, the National Pressure Ulcer Advisory Panel. And those were two-day conferences, a number of different speakers, a number of different topics.

Q. Now, if I understand correctly, a medical diagnoses or diseases do not in and of themselves create risk for pressure ulcers; is that right?

A. That's correct. Except where they directly cause one of those other risk factors that I talked about.

Q. Did Joan Boice have any particular risk factors for development of pressure ulcers before she was admitted to Emerald Hills?

A. Yes.

Q. And what were those?

A. She had occasional urinary incontinence. She had occasional incontinence of bowel. She had, to some extent, some impaired sensorium because of her dementia, meaning she may not remember if she's instructed to change position frequently, or she may not be directly aware of the need to relieve pressure if she's sitting in one spot for too long. Her nutritional status was pretty good at The Palms. Her mobility was good. She could get up out of a chair. She could walk with a walker.

Q. What about after she was admitted to Emerald Hills? What risk factors did she have for the development of pressure ulcers then?

A. Well, her condition when she was admitted to Emerald Hills was no different than when she was at The Palms. So December 12th, 2008, she's admitted to

Emerald Hills. She's pretty much in the same condition she was in the day before at The Palms.

Q. Did you say December?

A. September. Thank you.

Now, it was after she fell on September 22nd that it appears from the evidence staff at Emerald Hills were leaving her in the wheelchair for prolonged periods of time or leaving her in bed. And that increased her risk. Being left in the wheelchair, and she doesn't have the physical capacity to get herself up by herself and to shift her weight, definitely created a risk for pressure damage to her skin from sitting.

Q. Okay. Any other risks for Joan Boice for sitting in a wheelchair for prolonged periods of time?

A. Yes. Well, other risks for pressure ulcers. The weight she lost at Emerald Hills, the 20 pounds. Sitting in a wheelchair and not walking, it's really true, when you're old, if you don't use it, you will lose it. And she did develop significant contractures of her limbs from not walking. By the time she left Emerald Hills, she had -- both knees couldn't be straightened out all the way and couldn't bend all the way. The joints stay in the position they were in from sitting in the wheelchair.

Q. I'm going to talk a little bit about Joan Boice and what her -- you know, kind of do a "day in the life" for Joan. And I want to start first with what her life was like before she went to Emerald Hills, at The Palms.

Joan and Myron moved into The Palms when?

A. March of 2007.
Q. And did Joan and Myron initially move into a room together?
A. Yes.
Q. And after that -- sometime shortly after that, did they move into -- did Joan move into their Memory Care Unit?
A. Yes. May 1st.
Q. And were her medical diagnoses at that time the same as the ones that you related to us earlier?
A. Yes.
Q. Had she ever been diagnosed with a stroke prior to moving into The Palms in March of 2007?
A. No. There was a question about a stroke. And this arose in October -- actually, late September of 2006. Her primary doctor at Kaiser was examining her. She had fallen shortly before that appointment and the doctor observed her to be limping. And he tested the strength in her right leg, and he found the strength in her right leg was a little bit less than the strength in the left leg. So the doctor order a CAT scan of her brain to see if there was any evidence of a stroke.

She then went to see a neurologist. And it was really the neurologist -- both of them diagnosed the dementia. And the neurologist read the scan of the brain which did not show a stroke per se. But the neurologist said, *Well, we see these changes in the brain and these changes could possibly be from ministrokes.*

And this -- this is a little bit of a complicated area. But as the brain ages, there are parts of the brain that don't get enough blood supply. And you can take a perfectly normal -- intellectually normal 90-year-old and do a CAT scan of the brain and you will see these changes. You may see extensive changes. So just the -- seeing the changes doesn't mean anything in an older person.

You can also see people with advanced dementia who don't have those changes, or people that have had a stroke clearly that don't have those changes. So the changes, we don't know too much about their significance. But when you see them, it's possible that there was a little, tiny, tiny ministroke. There was a part of the brain -- the stroke -- a stroke is when some of the brain cells die, and whatever those brain cells controlled is going to be affected in the body.

And it's possible that she had a ministroke at some point, using that term, and that it affected to some degree the strength in her right leg. Whenever she had some other kind of stress, maybe the leg got a little bit weaker. But when the neurologist examined her in November, a month-and-a-half later, there was no weakness. And he thought it was Alzheimer's. He didn't think that it was ministrokes.

Q. So she had some weakness in her right leg that was noted by her physicians at Kaiser in the fall of 2006?

A. Right. Her primary doctor.

Q. And did you say she had fallen prior to that?

A. Yes.
Q. And do you have an opinion as to what was the cause of the weakness in her right leg in the fall of '06?
A. No. And, again, it's why I don't -- I cannot say and I don't believe there is enough evidence for anyone to say that she had a stroke causing paralysis of the right side of her body at any time before or after The Palms, Emerald Hills. We just don't have a good neurologic exam. We don't have a history. We don't have diagnostic imaging. We don't know.

Now, when it comes just to the right leg, nerve problems in the spine can cause weakness because of an injured nerve from the condition in the spine. Older people can have that. It can come and go. I mean, there's any number of possibilities, a traumatic brain injury from the fall she had on September 22nd. We don't have and we won't know.

But my opinion is that if she did have a stroke, it clearly happened while she was at Emerald Hills. And no one noticed it. There was no action taken. By the time she went to see Dr. Awan, she already had a contracture of her leg. And it's -- the evidence just isn't there.
Q. Can you tell the jury about Joan's condition over the 18 months that she lived at The Palms.
A. Yes. Overall, Joan's condition was very stable. And at The Palms, they had a very organized system for tracking her medications. They had a -- and this is from her -- the records of The Palms. They had a very organized

system for observing her for changes in condition and notifying her doctor. They had frequent reassessments, at least quarterly, and there were monthly notes by nurses. Caregivers were writing notes in the chart whenever she had a change in condition.

She had some falls. She actually broke the tip of her left thumb in one of her falls. She had a urinary tract infection. But if you look at the assessments when she first went in the Memory Care Unit on May 1st, and the last one that was done June 30th, 2008, they're almost identical. There's very few changes in her condition. And that's consistent with someone who has Alzheimer's disease, who still is walking with a walker. She is frail. She needs some assistance. Her memory isn't good. Um, it's pretty remarkable that in that time she was actually very stable.

MS. CLEMENT: Erik, can you please put up 5001, page 283, the assessment and care plan for Mrs. Boice from The Palms.

It's been moved into evidence, your Honor.

(Pause.)

MS. CLEMENT: Oh, I'm sorry.

252. I apologize, Judge. Sorry about that.

Q. (By MS. CLEMENT) And, Dr. Locatell, can you tell us what this is.

A. Well, as it says, it's the assessment and service plan for -- that's the name of the company that owns The Palms, California MCC. The date on this is actually

the last assessment, and we were going to look at the first one. But what I'd like to do is just quickly point out the findings on this. And it's many pages long. And there's a bunch of things you can observe from this. They planned so many aspects of her care, number one.

So this is the assessment. So this part right here (indicating) is the assessment. And then here's the plan (indicating). So does she require assistance with walking or mobility? Yes, she requires escort to most daily meals, activities and outings.

And we can go through these side by side, and it may be a cumbersome because it's kind of long. But if you compare this document on 6/30/08 -- and by the way, this is the only plan -- assessment and plan, truly, that she had at Emerald Hills, because Emerald Hills never did a plan for her. And the assessment that was done was not of this quality.

But you can compare the assessment on June 30th, 2008 to the one that was done on May 1st, 2007. And you can flip through these pages and you can see that these care needs really didn't change. There were only a couple of items where she needed a little bit more care. And the point --

THE COURT: Just one second.

MS. CLEMENT: Yeah.

THE COURT: Miss Clement, what is the number of this document?

MS. CLEMENT: 5001, 252.

THE COURT: I thought you changed it and said it was 258.

What is the exhibit number that we're working on?

MS. CLEMENT: 5001.

THE COURT: And the page again?

MS. CLEMENT: 252.

THE COURT: Okay. Thank you.

MS. CLEMENT: You're welcome.

Q. (By MS. CLEMENT) Should we go to the next page?

A. Well, you could actually go to the last page and compare the two last pages because that has the point total. Ninety-seven -- and there's a bunch of these in her file. Ninety-seven, a hundred, and a hundred and ninety-sven, were the extra points assigned based on what she needed from May 1st to June 30th, 2008. Very little change.

MS. CLEMENT: Okay. Erik, could you put up the last page, 265.

THE WITNESS: And it may be the -- actually, that's a different document -- I'm sorry -- that shows the points total. And it may be in one or two after this. I could get my record out and tell you, but...

Q. (By MS. CLEMENT) I think we're fine with your memory, Doctor.

A. Okay.

Q. I think that's pretty good.

So, was it your -- from reviewing --

MS. CLEMENT: You can turn the lights back on for

us, Terrance. Thank you.
Q. (By MS. CLEMENT) Was -- from your review at -- of The Palms records, did they have regular service plans that they developed for Mrs. Boice?
A. Every three months.
Q. And did they go over those services plans with Mrs. Boice's family?
A. Yes. And they updated the one that was in place, if there was a change, before the three months.
Q. And that's what the standard of care is?
A. Correct.
Q. Now, we know that Joan and her family made a -- or Joan's children and Myron wanted to move closer to Eric and Kathleen Boice. (Verbatim.)
Can you -- and that happened in, what, September of 2008, right?
A. They started looking in July of '08, and they signed up with Emeritus in August of '08. And Joan moved in September 12th, 2008.
Q. Can you tell the jury if you've reached an opinion in this case as to whether or not Joan was appropriate for admission to Emerald Hills in September -- at any time?
A. In my opinion, she was not appropriate.
Q. And did you think she could have remained at The Palms?
A. Yes.
Q. So can you explain that to the jury as to why one assisted living facility, The Palms, she was appropriate

for, but not at Emerald Hills.

A. Yes. Remember that no facility is required to accept someone who may want to move there. But if that person is accepted, there has to be an assessment, a pre-placement appraisal, interview with the resident and the family. There has to be a plan for how you're going to meet their care needs. And there has to be sufficient staff to meet the care needs before they sign on the dotted line and commit themselves. That didn't happen at Emerald Hills.

We -- I know from the evidence I've reviewed, and you've probably heard all the evidence about how this facility was understaffed, and it wasn't managed, and it wasn't supervised, and the staff in place was not qualified and they were not trained. Whereas, if you look at the care she got at The Palms -- and all I've looked at is her actual record. I don't have all the information about how The Palms was staffed or how the training was conducted. But what I can see in the records is that they did all these things they were supposed to do. They did the assessments. They did the plans. They did the updates. They involved the family. They kept the doctor informed.

And the difference is really remarkable when you actually look at everything The Palms did for her and, also, at the outcome. She was stable for those months. She didn't have any weight loss. She actually gained a couple of pounds. She had falls, yes. And falls are very difficult to prevent even under the best of circumstances.

But on the whole, it looked like she was appropriate to remain at The Palms because they had the plan, and it appears they had the staff.

Q. Now, do you know if Emeritus advertised their dementia unit at the time that Mrs. Boice's family was considering them, that facility, Emeritus?

A. Yes. They did. I looked at the brochure.

Q. Did you also see evidence of their website, marketing materials that they had?

A. Yes.

Q. And does the State of California have regulations about assisted living facilities advertising dementia care?

A. Yes. And we talked about those.

Q. Now, is it true that Emeritus' brochures state that the staff were specially trained?

A. Correct.

Q. And that they -- what was your understanding of what that training was supposed to be, according to Emeritus?

A. They had a -- their own designed program called "Join Their Journey." Emeritus created this -- and I think it was even trademarked, "Join Their Journey."

Q. Okay. And I think we could bring up -- do you want to look at the brochure, or do you want to keep moving on?

MS. CLEMENT: Okay. Erik, can you get that up for us. That would be Exhibit Number 6, your Honor.

Thank you.

THE COURT ATTENDANT: Mm-hmm.

MS. CLEMENT: Erik -- it's a folding exhibit, the

brochure. So that's the front and back.

There you go.

Q. (By MS. CLEMENT) And does the brochure indicate it's a special care program for residents with Alzheimer's disease and related dementia?

A. Yes.

MS. CLEMENT: Okay. Erik, next page.

Erik, you're going to have to make that bigger for us, please.

Can you get it any bigger?

Q. (By MS. CLEMENT) Okay. Okay. So can you tell the jury what, if any, concerns you had about the advertisement that Emeritus was making in its brochures to potential residents like Mrs. Boice.

MR. REID: Well, the document speaks for itself, your Honor. And this -- I don't think it's appropriate subject for expert testimony.

THE COURT: As phrased, sustained.

Q. (By MS. CLEMENT) Okay. Did you have an understanding that Title 22 has specific regulations addressing false advertising in dementia care, for dementia care units?

MR. REID: It calls for a legal conclusion, your Honor.

THE COURT: She can answer.

THE WITNESS: Yes. There's -- there's a section on it in Title 22, false advertising in dementia special care.

MS. CLEMENT: It's on the right, Erik. Halfway down

the second paragraph, "We use this research..."
Q. (By MS. CLEMENT) Did you see any evidence in Mrs. Boice's record that they ever developed an individualized service plan for her?
A. None.
MS. CLEMENT: Erik, can you bring up the next side of the document.
Q. (By MS. CLEMENT) How about this Maslow's Hierarchy of Need? Did you see evidence that Mrs. Boice was lifted up through the triangle of the Maslow's Hierarchy of Need?
A. No.
MS. CLEMENT: And, Erik, can you bring up the interaction and communication.
Q. (By MS. CLEMENT) Did you see evidence that the staff was specially trained in accordance with the Title 22 regulations?
A. No.
MS. CLEMENT: And, Erik, can you take it to the right side, "All inclusive community and complete range of residential living systems -- living services."
Q. (By MS. CLEMENT) Did you see evidence that there was --
MS. CLEMENT: Highlight it, Erik.
Q. (By MS. CLEMENT) -- small group areas for -- did you see evidence that Mrs. Boice was having an activities-focused program at Emeritus?
A. None.
Q. And what's the problem with not providing activities

to a resident like Mrs. Boice who has -- suffers from dementia?

A. Well, it's not so much that you're providing them to the residents, but people need something to do, whether you're suffering from dementia or you're not. If all you have to do is sit and wait until the next meal and you're not engaged in any kind of recreational activities, again, it's a case of "use it or lose it." And in some of the dementia facilities I've been in, there's ongoing every day, every hour of every day, things for residents to do.

And there's a lot of newer ideas about how we enhance the quality of life for people with dementia. And I've been in a facility, and it was in the Sacramento area, where the residents are -- some of them are folding the napkins that would be used at the supper meal. Some of them were actually washing pots and pans, and they liked that. They had a garden for people. These aren't high-tech things we're saying. It's just people need something to do. And it needs to be appropriate for what they used to do in their lives.

And, you know, Mrs. Boice, the activity history that they took at The Palms, you know, she liked quilting and knitting. She liked to collect fine china figurines and Disney figurines. And her favorite movie was *The Sound of Music.* I mean, you could design a lot of things for her to do that would have to do with those special things to her. And it doesn't take a lot of, you know, investment to do

that. But you have to have a little bit of awareness, training, and you have to have time.

Q. And do you also need staff?

A. Yes. That's the time.

Q. Assistance with walking, was that one of the things that they indicated that they were providing for Mrs. Boice?

A. Yes.

Q. Did you see evidence that was happening at Emeritus?

A. No.

MS. CLEMENT: And thank you -- thank you, Terrance.

THE COURT ATTENDANT: You're welcome.

Q. (By MS. CLEMENT) Did you think that caused Mrs. Boice harm, the failure to provide her assistance with ambulation and walking with her walker?

A. Yes. I mean, in large part, that is why she developed the contractures, that her cognitive functioning also went way down; no engagement, no exercise. When you're not just walking even some every day, you're metabolism changes, your circulatory system. Your blood doesn't get flowing. You may metabolize your drugs differently. There's all kinds of things that can change.

So without walking her -- sit her in a wheelchair or keep her in bed, no activities, no attention, nobody noticing, nobody seeing that now she -- they were lifting her to get her out of the chair or out of the bed. When -- the first time physical therapy came out there, on November 6th, she couldn't even stand up.

Q. And why was that inappropriate for Emeritus to have a resident like that at that time?
A. She was definitely bedridden at that point. No question about it. Risk for pressure sores.
Q. And at that point, she already had pressure ulcers?
A. She had one, yes.
Q. What standards was Emeritus required to comply with prior to accepting Mrs. Joan Boice for admission?
A. I think the things I've already said. They needed to meet with her. They needed to do an appraisal. They needed to have a service plan in place to meet her needs based on their appraisal.
Q. So let's get right into Emerald Hills.

Can you tell us broadly what Mrs. Boice's course was at that facility.
A. Yes. Fall on September 22nd. Follow-up care was never provided -- arranged for, I should say, after she went to the emergency room. The emergency room doctor said, "Keep her in the wheelchair." And that's what they did. But really what needed to happen was Dr. Awan, her primary doctor, needed to be aware of the fall, and to go back and see Dr. Awan and maybe she needed physical therapy then. That's one of the things you do to prevent an older person from falling. Get them moving. Get them stronger. So, instead, we have nothing.

October 14th. Now she can't bear weight on her right foot because she's having more frequent and intense pain. Family not told about that.

November 3rd. She's got an open draining wound on her foot. Maybe that was the source of the pain. We don't know. There was no one looking at her skin. There's no documentation at all of monitoring skin care.

Q. Did Emeritus comply with Title 22 following Mrs. Boice's fall and notify her physician?

MR. REID: That's calling for a legal conclusion as it's phrased.

THE COURT: Can we break this down, please.

MS. CLEMENT: Oh, yeah. Sure.

Q. (By MS. CLEMENT) Under Title 22, is Emeritus required to notify Dr. Awan, her treating physician from Kaiser, when she had a significant change in her condition, such as requiring to go to the emergency room?

A. Yes.

Q. Did you see any evidence that Dr. Awan was notified?

A. No.

Q. Did you see any evidence in the Kaiser records that Dr. Awan was notified?

A. No.

Q. Did you read Dr. Awan's testimony?

A. Yes.

Q. Did she indicate that she had not been notified?

A. Yes.

Q. Then on October 14th, when she had a pain in her right foot, and Dr. Awan ordered an x-ray of her right foot and ankle, did you see any evidence that was carried out by either Emeritus or that her family was notified?

A. No.
Q. Do you think that met the standard of care as set forth in Title 22?
A. No. Absolutely not. And, in fact, if she couldn't bear weight on her foot on October 14th, by November 6th, she couldn't stand at all. Well, not even -- let alone bear weight on the right, she couldn't stand up. And the staff had to physically lift her.

So, no follow-up about the x-ray. And then no follow-up observations about this change in her condition. No plan to deal with it. Just ignored. Just completely ignored.

And now, November 3rd, open wound. Go sees Dr. Awan. Physical therapy. Therapy comes in November 6th. She's stiff. She can't stand.
Q. Can you tell us -- we've heard testimony in this case by care a caregiver who said that weeks before Mrs. Boice left the facility that Mrs. -- she was treating ulcers on Mrs. Boice's foot and her bottom.

Is that within the standard of care set forth in Title 22, to have a caregiver, unlicensed, be treating pressure ulcers on Mrs. Boice?
A. No.
Q. Did you see any evidence in the record of any documentation by the caregiving staff, prior to November 30th, 2008, that Mrs. Boice had pressure ulcers?
A. No. She did not. There was no history of any pressure sores.

Q. This same caregiver testified that she filled out multiple care alerts and that other caregivers filled out multiple care alerts about Mrs. Boice, specifically about her pressure wounds, her pressure ulcers.

Did you see any evidence that those care alerts existed anywhere in Mrs. Boice's chart?

A. No. There was only one care alert in her chart. That was from November 30th. And it says, *Now she's got multiple new areas of skin breakdown.*

Q. Now, if Emeritus had complied with Title 22 from the beginning, with sufficient staff, training, supervision, do you believe Mrs. Boice would have ended up with multiple pressure ulcers, 20 pound weight loss, contractures?

A. Definitely not.

Q. Do you have an opinion as to whether any of these changes in her conditions were due to any new or underlying or any -- excuse me.

Do you have an opinion as to whether any of these changes, these multiple pressure ulcers, these contractures, the weight loss, were due to any underlying or new medical conditions?

A. No, apart from the possibility of a stroke, a traumatic brain injury, something different that happened in her brain at some time between September 22nd and November 6th. Again, she's stable for 18 months. And then "shhhh" (sounding), in a short period of time she becomes severely disabled, a very short period of time.

Now, if she'd had a stroke -- and I'm saying I don't

know. There's no evidence to say that she did or didn't definitively. But if she'd had a stroke, a stroke isn't a death sentence for someone like this. There are -- there are, you know, hundreds of thousands of people that live with strokes in this country. Most of them live in nursing homes. They're too disabled to stay in an assisted living facility. They need to be assisted with lifting. They might have trouble chewing and swallowing.

So if she did have a stroke and nobody even knew that it was there, well, that can explain how "shhhh" (sounding), she goes straight downhill, beyond the point of any return. There was no evidence, though, that she had that stroke. And even after she left, there wasn't evidence that she had that stroke. I think it was entirely because she was neglected that she went downhill that quickly.

Q. Let's start with weight loss.

Why, in your opinion, do you believe that Emeritus failed to do something or did something that caused or contributed to her weight loss?

A. Well, first of all, they never weighed her. And Title 22 and their policy, the requirement, the standard of care is, for someone with dementia, you weigh them once a month. They never weighed her once. The staff knew she was having difficulty eating. Direct-care staff had been told, "Don't feed anybody."

The Memory Care Unit director told the nursing home she's pocketing her food. "Pocketing" means you take a

mouthful and you hold it in your cheek. But nobody at that facility, at Emerald Hills, ever told her doctor, "Oh, she's pocketing food." If somebody's pocketing food there's things we can do about that. And they did those things at the nursing home when she left.

Q. And did Dr. Awan, in the physician's report, that 602 from June of 2008, did she indicate at that time that Mrs. Boice needed assistance with eating and cuing and reminders to eat and to finish -- you know, help with eating?

A. Yes. And she clearly needed some assistance with eating. She couldn't get her own food. She couldn't necessarily cut it. She was supposed to cut her food. That was one of the changes they made at The Palms, from when she first got there to later on in the stay. Now she needed to have her food cut. And she needed cuing. "Come on, Joan, take another bite." "Go on, take it and swallow it." "That's good." Basic stuff.

So she did need some assistance, but it appears she didn't get it. Either she didn't get it, or she just wasn't eating for whatever reason. She didn't like the food. It didn't taste good. Maybe she couldn't chew it.

And it gets to be a vicious circle. People start losing weight, they get weaker. Their muscles get weaker. They have more difficulty eating. They lose the strength and the stamina, the endurance they need to sit there and eat a meal. And so it tends to fold into itself. But if you're not weighing the person, you're not monitoring

whether they're eating or not, you're not taking action when you see they're having some problems, like take a mouthful of food and just hold it there, and then send her to the doctor, where the doctor finds food in her mouth -- that happened on November 4th -- that is another indication of the neglect at that facility.

Q. Did Alzheimer's disease cause her to lose weight?

A. Not in my opinion. Her Alzheimer's disease was in the moderate stages. It was not advanced, and it certainly wasn't end stage. And with Alzheimer's disease people do not lose that reflex. It's really a reflex, until they're at least in the advance stages. They don't develop disordered swallowing except when the reach near the end of the disease.

Now, a stroke can affect swallowing. But if someone has a -- the type of stroke that affects swallowing, they almost always have a droop of their face. Because the nerves that keep the face looking normal and symmetrical are also coming from the same area where the nerves that effect the swallowing come from, at the brain stem. So you don't just have isolated "can't swallow" without any other signs. And she never had that droopy face, and she didn't have any other obvious evidence of a stroke to look at her either.

Q. Did you look --

THE COURT: We need to stop. I'm sorry.

MS. CLEMENT: Okay.

THE COURT: We need to take our afternoon break.

Ladies and gentlemen, leave your notebooks on the chairs. Remember the admonitions. Let's be back, ready to go, at 3:20.

(Recess.)

(Change of court reporters.)

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(The following proceedings were held in open court, in the presence of the jury:)

COURT ATTENDANT: Come to order. Department 45 is once again in session. The honorable Judge Judy Hersher now presiding. You may be seated.

MS. CLEMENT: Thank you, Judge.

Q (By MS. CLEMENT) Did Emerald Hills provide any training to their staff on how to recognize and prevent bed sores?

A No.

Q Did they provide any training to the staff on what they should do if they found a bed sore?

A No.

Q Um, was Emerald Hills at Emeritus required to provide such training?

A Yes.

Q Is that training required as part of the Title 22 training?

A Yes, specifically for dementia special care units.

Q Now, I would like you to explain to the jurors, um, what a bed sore or pressure ulcer is?

A That is damage to the skin and/or -- and tissues under the skin that's caused by pressure, just like it sounds.

Q And why from sitting in one place too long or being in the same position too long does the body -- can the skin break down?

A The -- the skin breaks down because the weight of the body over the skin -- and these happen over bony prominences

they are called. So they occur over bones. So you're laying in bed or sitting in a chair, the weight of your body over your bones, whether it's bones in your feet, bones in your butt, people can get them in their elbows, people can get -- people and babies in the neonatal intensive care unit get it on the backs of their heads. So it's unrelieved pressure, the blood can't get to the skin or the tissues. So the circulation is cut off to the skin and to the tissues and the tissue dies.

Q Um, how long does tissue -- does it take before tissue damage can start to form in unrelieved pressure?

A Well, we don't really know because we don't have the ability to do those kinds of experiments, leave someone laying around and see how long it takes for a bed sore to happen.

Now, going way back in time there were nurses -- and this is the old story when you talk about bed sores. A hospital in Scotland, it was full of people who couldn't move in bed, and they had a problem with bed sores and they decided, well, let's put in a program of rotating these people. So they moved them and turned them and it took the nurses two hours to make the rounds of all of the patients. And when they got to the end, they started over again. And so all of the patients got turned every two hours, and lo and behold, no more bed sores.

So the general feeling is that someone who cannot reposition themselves, you need to help them reposition every two hours.

Q And how about when they are in a chair, is there, um, any indication that there should be more frequent repositioning of an immobile person when they are in a chair?

A Yes. If the person in a chair can't even make small changes in position -- and the classic is someone who is paralyzed, Christopher Reeves, paralyzed from the neck down -- then we need to help people move and shift the weight off of the bones. There is several bones that can be affected by pressure when -- when you're sitting, the weight of the torso just rests on these bones. Um, we provide assistance to shift the weight every 15 minutes when sitting in a chair. But if the person is capable of just shifting a little bit, that's not as necessary. Now, um, most of us do this without even thinking about it. I mean, we don't think about it, right?

Q Right. Can you tell us in your opinion are pressure ulcers or bed sores preventable?

A The vast majority of them are. This is the consensus of experts in the field. This has been debated and discussed widely. There is a number of pieces of evidence that tell us that they are preventable.

And one of the strongest ones that I've seen -- and I just read another study recently, a recent study from 2012, that a hospital that put together a very comprehensive program to make sure all of the staff was trained and compliant with the training to prevent bed sores, and their bed sore rates went from twenty percent to zero. Same

population. These are all sick people, they can't move themselves around, but when nurses do what the standard requires, what we know works, no more bed sores.

And this is also true in other care settings, home health, people get bed sores when they are at home, assisted living, nursing homes. Facility A, very few bed sores, facility B, a bunch. Patients are the same, what's different? Care. Care-related. It's a care complication. In hospitals they are actually considered never events. A full thickness bed sore, which is stage 3 or stage 4, is a never event. Like operating on the wrong side of the body. Shouldn't happen. That's -- that's the determination of centers for Medicare and Medicaid services.

Q If tissue damage is neglected and pressure is not relieved, what will happen to an existing pressure ulcer?

A It will get worse.

Q And can it get worse quickly?

A You know, we don't know. Again, it's pressure over time is what causes the damage. It doesn't happen in an hour. It doesn't happen on the ride over to the other facility or the emergency room. Pressure over time, the tissue that goes without blood because of the weight of the body, again, it's cutting off the blood supply to the skin and the tissues, that tissue will die. How much time does it take to kill the tissue? It depends on a number of things, but it could be a lot of pressure over a short period of time or it could be, you know, less pressure over many days at a time, but it does take some time.

Q Are pressure ulcers painful?
A Yes.
Q Are they debilitating?
A Yes.
Q What do pressure ulcers do when they are at full thickness or stage 3 or 4, um, to the body's -- the body overall?
A Well, the -- it's -- it's a -- it becomes chronic when you've got the full thickness of the skin is gone because it can't just heal over like a bad scrape or even a cut, it has to heal from the edges to the middle because there is no skin left in the middle of this crater and so that takes time. And if it's deep, the tissue has to fill in from the bottom up to the top and fill over the top. And so all of the whole while that that is open skin it -- it's -- it's like an infection that doesn't go away in the body and it saps, um, your metabolic processes and it may put a drain on your nutrition.

It's also mentally debilitating for people because you are having to have them dressed all of the time. And if you have them, you know, on your private areas, you know, someone is having to undress you and open up your butt and put these dressings on and it's debilitating mentally too to have to go through that. So it's physically and mentally debilitating.

Q Full thickness pressure ulcers, can they require months or even years of treatment?
A Yes. It takes a month for the skin to grow one

centimeter and that's just skin over the top. Now, one centimeter -- you can get out your little rulers but it's pretty darn small. It takes a month for the skin to grow that distance (indicating). That is just the fastest skin can grow when there is nothing else there. There are no skin islands, there is no starting point, it's just a hole. It's going to take, you know -- if it's three centimeters across, it's going to take three months.

Q A person with pressure ulcers, can they suffer irreversible decline in their health?

A Yes. Although you see it in conjunction with whatever made them at risk for the pressure ulcers in the first place, so if they are bedridden, they are contracted, their nutrition is poor.

Q Can pressure ulcers lead to death?

A Yes.

Q Can they progress to the bone without relief of the pressure?

A Yes.

Q The first evidence that we have in a record that was produced in this case that you know of, um, was the notice to the family of a right foot ulcer on November 3rd, correct?

A Yes.

Q And in your opinion, was that a pressure ulcer?

A Yes.

Q And what -- on what do you base that opinion?

A Several things. First of all, when, um, nurses -- the

physical therapist and a nurse and subsequent nurses and every nurse, and leaving aside Dr. Awan for a moment because I don't believe Dr. Awan recognized it as a pressure sore, but all of the nurses did, the physical therapist did and every one of them called it a pressure sore. So they are right there looking at it. I'm looking at their documentation.

The other thing that convinces me that this is a pressure sore are the photographs of Ms. Boice's pressure sores. In particular, there is one where she had developed the sore on the big -- the knuckle of the big toe. If this is a big toe (indicating), it's right here on this plane of the foot, on the side of that big knuckle. And she has another one on the heel in the exact same plane of the foot, and that's from the weight of the foot resting on the bed, pressure on that bone, on the knuckle bone, pressure back here on the heel. And then you see it on the other foot on the exact same plane because she is laying in bed with her legs sideways on her side, weight of the leg. It's not a bunion. I don't even see a bunion in the photograph.

MS. CLEMENT: Your Honor, at this time the Plaintiffs would seek to move into evidence Exhibits 293, 52, 53 and 56 with stipulation of Defense Counsel.

(Discussions were had between attorneys.)

MR. REID: That is fine, your Honor.

THE COURT: All right. 293, 52, 53 and 56 are admitted today.

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(Joint Exhibits 293, 52, 53 and 56 were admitted into evidence.)

MS. CLEMENT: Terrance?

Erik, can you please show us Exhibit 293?

Q (By MS. CLEMENT) Can you describe for the jury what we are seeing in this photograph?

A Yes. This is, um, Joan Boice's right foot. Here's a big toe. This is the foot ulcer that, um, I believe is a pressure ulcer. Now, you can't see it on this picture but -- you can sort of see it on this picture, but if she did have a bunion -- and a bunion is when the big toe goes this way (gesturing) relative to the foot. If this is my foot and my big toe goes this way (gesturing), then the bone ends up protruding over here. That's what's classically known as a bunion. And typically women get it from wearing pointy toes and their toe goes the wrong way and it stays like that. Now that, if she did have a bunion, would result in that being a high spot. So if she is laying on her side you are going to see pressure -- you are going to get pressure there.

And this is definitely a pressure sore. This looks like a blister, it looks like a blood blister, and that is actually what it is, but it's caused from unrelieved pressure. And if you look, it's the same plane of the foot. If you can picture the foot rotated 180 degrees, you would see that both of these two surfaces are touching the bed. So if she is left in bed with the weight of her leg over these two surfaces you're going to get unrelieved pressure,

death of the tissue.

This turns out to be the chronic one. This photograph was taken about, um, um, December 8th. And the first description of the wound is by Dr. Awan on November 4th where she called it a ulcerated bunion. When you look at this wound up close, you can see that this has characteristics of a chronic wound, it's full thickness and it has depth to it.

MS. CLEMENT: Your Honor, at this time with stipulation of Counsel we would like to move into evidence Exhibit 54.

MR. REID: No objection, your Honor

THE COURT: All right. 54 is admitted.

(Joint Exhibit 54 was marked and admitted into evidence.)

MS. CLEMENT: Can you make that bigger, Erik?

THE WITNESS: Um, again, this one, I'm not seeing a protruding bone like a bunion right there. It looks flat. I would expect to see a mound right there if she really had a bunion but it's not the best angle to see it. She had never been diagnosed with a bunion. No one ever wrote in a exam, oh, she has got a bunion.

This wound, this is the subcutaneous tissue right here. You can see the defined borders of the skin. And once the skin over this area is dead and gone, it's just like it's punched out and it looks like a crater. You can also see it's piling up around the edges, it's trying to heal.

If you can go back to the picture just before this.

So that is a stage 3 ulcer and actually it was called a stage 3 ulcer. The first time a health care, um, professional, apart from Dr. Awan, um, looked at it was on November 14th. The physical therapist looked at this wound and called it a stage 3 pressure ulcer. Stage 3 is full thickness through the top layer of the skin into the subcutaneous tissue. Stage 4 is all the way down to the joint muscle or bone.

Q (By MS. CLEMENT) What's a unstageable pressure ulcer?

A Unstageable means there is dead tissue there and you don't know how deep the wound is.

Now, this wound you might call unstageable because it's black. And that's what ulcers turn when the blood is trapped in there and blood turns black when it oxidizes. That is the iron in the blood cells trapped in the tissues there and it turns black. So this is full thickness also we know because if it was just superficial, it would look like a blister, it would be clear, it wouldn't have any blood in it. So when you see blood in it, you know it went deeper, it went down underneath the top layer of this skin. And so, um, this wound is unstageable because we don't know how deep it is and -- but it's at least a stage 3.

Q And then, Erik, will you bring up the left foot, please?

A Now, this is the left foot. Here's the outside of the left ankle. And -- and you see that this ulcer on the left side of the heel, again, it's on the outside of the heel so if she is put on her side with her legs scissored over like

this (indicating), the outside of the left heel is going to get pressure and the inside of the right foot is going to get pressure. And I've seen people positioned in a bed like that where their feet are resting on the mattress and this is how you get these wounds.

This wound is also unstageable because of this dead tissue in the center here and you don't know how deep that wound is.

Q Jenny Hitt described a wound on Mrs. Boice's bottom. Um, did you see evidence in the -- that she had been treating for weeks. Did you see evidence in the record that this wound was discovered, um, by -- by the Kaiser home health nurse when a caregiver told her about it?

A No Kaiser nurse noticed any other wound than the bunion wound, for lack of a better term, the foot wound, um, until December 1st.

Q Can you -- and the wound that was on her bottom, what -- where -- what was the proper term for that?

A The ulcer is over the ischium. The ischium is the bone on the back of the pelvis, if you will. And when you're sitting down, you're sitting on those two bones on either side. Um, so the lay term I use is butt bone. She has a sore on her right butt bone. The other bone that you get pressure on when you're sitting is the coccyx, which is in the middle of the very tip of the spine all the way at the end.

Q Okay. Now we are going to look at that. Can you show us Exhibit 56, Erik?

A This wound -- this is the butt -- the buttocks. Here is the thigh. This is the right -- here's the outer part of the ankle, just to orient you. This is the exact spot where you see a -- a ischial pressure sore, a sore over the ischium. It is unstageable. This is dead tissue in the middle. It's full thickness. You can see the defined borders like a crater.

Now, this wound also has a bunch of dark skin all around it. And that skin, um, may well also be affected but it hasn't fully died yet. And you -- we don't know -- this is unstageable, we don't know how deep this wound goes. But it looks like it's not limited to just the crater, like the bunion was. There is something else that's going on with the tissue, devitalization of the tissues around it.

Q Thank you.

What was Emeritus required to do as soon as the first sore was discovered that Jenny Hitt described being discovered weeks before she left -- Mrs. Boice left the facility?

A Well, any time there is an opened wound of any sort the facility has to call the family and has to call the doctor. They can't diagnose. They can't treat it. They can only do first aid. So if somebody cut themselves in the building, they can do first aid. But they have to call someone. And the doctor is the one that makes the decision, maybe the person needs to go to the emergency room. Maybe the family says, oh, I'm going to come right over and I'll take her into Urgent Care. Something has to happen because

this is not a health facility, this is a social model. You cannot leave these things to go. You have to do something with them.

Now, having said that, they had a nurse in the building. And what I've seen in other facilities is if there is anything that looks unusual and the caregivers are trained to do this, they call the nurse. Hey, come and look at this, something isn't right. And in Emeritus they use these CARE alerts and the nurse was supposed to review the CARE alerts and to do something about them. And as I believe -- and I did read Jenny Hitt and I understand, um, that Jenny Hitt said she did multiple CARE alerts, but there is no evidence that the nurse ever looked at any of these wounds ever.

So if you're not going to call the doctor and you're not going to call the family and even the nurse you have isn't going to look at it, that's grossly substandard.

Q Did -- Dr. Awan testified she wasn't familiar with how to stage or treat pressure ulcers; is that true?

A Yes.

Q Is that unusual in your experience with family practice doctors or internists?

A No, it's not unusual at all. I didn't get any training on pressure ulcers in my internal medicine residency. I had to teach myself about pressure ulcers when I went to take my geriatrics boards. And when I started doing nursing homework, that's when I really had to learn about pressure sores. But most doctors don't learn about

it, they don't know, and Dr. Awan testified she didn't know. And she actually relied on home health nurses to go and make an assessment and decide what kind of treatment the wounds needed. Doctors do rely on nurses for those things.

And as I said earlier, this is a nurse area. Nurses are at the bedside taking care of the skin, whether it's in a hospital, nursing home. In a social model you have untrained caregivers, but they are supposed to have some training on skin and they are supposed to be trained to follow the procedure that if they see something, they have got to tell someone about it.

Q So there was, um, home health called out for -- by Dr. Awan, correct?

A Correct.

Q And were they in the facility every day 24/7 providing care to Mrs. Boice?

A No. And, in fact, um, home health sent out only a physical therapist, and the physical therapist did not do a skin inspection. The physical therapist wrote in the -- in the chart, in the Kaiser home health chart, that there were no ulcers. But there was a ulcer because the caregivers at Emerald Hills told the family about an open sore on her foot. Dr. Awan saw an ulcerated bunion. So the physical therapist did not look at the skin on the 6th.

And it wasn't until the 14th when one of the caregivers at Emerald Hills told the physical therapist her foot -- her leg is swollen and she has got an open sore and it's draining. When it's draining it means you need to

really get on it. It's draining the fluid out of it. And then the physical therapist said, Stage 3, and it wasn't until the 18th, four days later, that a nurse came out.

Q Is it your opinion that the pressure ulcer on Mrs. Boice's foot was related at all to the pain and, um, Mrs. Boice's inability to bear weight that was, um, noted by Nanette Read, the caregiver, in her fax to Dr. Awan?

A Very likely. We didn't end up with any kind of an explanation for why she was having more frequent and intense pain in her right foot on October 14th. But then we see an ulceration on November 4th -- November 3rd. Um, it makes sense, especially if she had a shoe on and if the pressure from the shoe was causing her pain when she went to stand up on it, but I don't know.

Q Did anyone from Emerald Hills ever pick up the phone and call Dr. Awan between -- after that order was given on October 14th, um, through the time that she left the facility on December 4th and say, help, we need to have help with this pressure ulcer or these pressure ulcers?

A No. And they didn't pick up the phone after Mrs. Boice went to see Dr. Awan on the 4th. Now they have a dermal ulcer, they know they have this. Dr. Awan didn't give them any treatment plan, didn't give them a stage. So they didn't do anything at all until the 14th when the caregiver tells the physical therapist, hey, you know, why don't you take a look at the foot. But the therapist didn't know. Therapist didn't look at the skin.

Q Did you see any evidence that Dr. Awan understood what

the regulations were for assisted living facilities?
A No. And -- and what doctors know about pressure sores, they know even less about the regulatory framework of assisted living facilities.
Q Who, in your opinion, bears responsibility for the failures to, um, prevent and get treatment for Mrs. Boice's pressure ulcers?
A Well, under Title 22 and the standard of care the licensee is responsible for the operation of the facility and the general supervision of all of the care to every resident. So Emeritus was responsible for the conditions that were present in Emerald Hills that led to these wounds.
Now, when Emerald Hills caregivers told Mrs. Boice's family about this wound, that wasn't enough either because they didn't tell the doctor themselves. They didn't communicate with the doctor. There was no nurse. And -- and, again, if -- if the licensee was operating it to comply with the standards, they had to have a skilled professional treating this wound from day one and they never got one. Nobody knew. The caregivers were burdened every day treating it on their own apparently because they didn't even have any instructions on how to treat it.
Q Do you think it was the caregivers' fault?
A No.
Q How would you characterize the -- the failure by Emeritus to prevent and get appropriate treatment, skilled treatment for Mrs. Boice's pressure ulcers?
MR. REID: That is vague, your Honor.

THE COURT: Sustained.

Q (By MS. CLEMENT) In Mrs. Boice's case was there any evidence that anyone contacted Dr. Awan or the family about the pressure ulcers on her, um, ischium or the other three -- the other two pressure ulcers at any time prior to December 1st, 2008?

A No.

Q How long, in your opinion, had these pressure ulcers on the right ischium, left heel, and right heel had to have been there?

A Well, the, um, left heel, not the same foot as the bunion, the other foot, um, that wound had been there for weeks at the time the picture was taken, and there are several characteristics of the wound that tell me that.

Now, that small black spot on the right heel, that one probably had been there for a week. It takes about a week for that blood that's trapped in the tissues to turn black. Once it's black like that, it breaks down more and it gradually turns to yellow. And you can see in the ischium, the base of that wound turned yellow, and there were parts of the left heel that were also yellow. There was a brownish spot in the center. So it starts out black and then it goes to brown and then it goes to yellow. So the color of the -- of the dead tissue tells me that it's weeks, um, in time since those wounds happened.

Now, when the home health nurse described them on November 1st in the Kaiser records --

Q December 1st?

A December 1st. Sorry.
Q That is all right.
A The descriptions were pretty similar to what the photographs showed. But I think that the one that is black in the photograph, which was taken a week later, um, was described as purple. So it goes from red to purple to black when the blood is trapped in there in a blood blister.
Q And are those photographs that were taken to your understanding on December 8th, 2008, um, consistent with the descriptions by the Kaiser wound care nurse who treated Mrs. Boice on that same day at Foothill Oaks --
A Yes.
Q -- convalescent hospital?
A Yes. And they are also consistent with what the nurses at the nursing home wrote and described and measured on the day she was admitted because the nurses did a careful skin check and they went over her whole body. They found nine different areas and they describe what they look like, they described the sizes, they measured them, and, um, they did a very careful examination of the skin. And when you look at the four full thickness wounds, um, the descriptions, we have the 12-1 by home health, we have 12-4 by the nurses at the Foothill Oaks Nursing Home, and then we have the Kaiser nurse on 12-8, and then we also have the photographs on 12-8. And if you put those things together, they are all consistent with, at least in the three wounds, chronic wounds. They have been there for a long time. They didn't show up on November 30th. They likely had been there

for two weeks, maybe even more.
Q Um, how would you characterize Emeritus' failure to provide the care Joan Boice needed to prevent and treat these pressure ulcers?
MR. REID: That is vague, your Honor.
THE COURT: Are you asking her to give a medical opinion on a topic or are you asking her to describe the words that she used?
MS. CLEMENT: I'm asking her to give her opinion as a, um, mandated reporter of elder abuse and expert in this area.
THE COURT: Then please rephrase your question.
MS. CLEMENT: Okay.
Q (By MS. CLEMENT) Can you tell the jurors in your role as a -- both a mandated reporter and expert in the area of elder abuse how you would describe Emeritus' failure to provide the care Joan Boice needed to prevent and treat the pressure ulcers?
A Well, first of all, it was neglect because they let it go day after day, no action taken. They know they are not allowed to keep those wounds in the building. Stage 3 is prohibited. Stage 1 and 2 needs to be under treatment. They didn't do that day after day after day. So that's knowingly failing to provide her the care she needed.
And, you know, the term I have heard used --
MR. REID: Your Honor, I think she has answered the question.
THE COURT: She can finish.

THE WITNESS: I have used myself in a legal context --
MR. REID: Could we be heard at sidebar? I think there is a motion in limine that I'm concerned about.
THE COURT: That's different than "she has answered the question."
MR. REID: Okay.
THE COURT: Could you tell me the number, please?
MR. REID: I believe it's motion in limine number 2.
THE COURT: Okay. Just one moment.
Brooke, could you go down so I can see how she answered the question, please?
(Whereupon the real-time screen was adjusted as requested.)
THE COURT: I don't find any violation of that order.
MR. REID: I'm concerned about the continuing part.
THE COURT: Well, let's wait and see.
MR. REID: Very good.
THE COURT: Could you read her back the question and the answer as far as she got?
(Whereupon the last question and answer were read back as requested.)
THE WITNESS: Is they acted with conscious disregard of the rights, health and safety of Joan Boice.
MR. REID: Your Honor, I think that violates the spirit of that motion in limine, and I would move to strike the last portion of that answer. It's a question for the jury.
THE COURT: Ladies and gentlemen, would you step outside the courtroom doors for one moment, please?

(The following proceedings were held in open court, outside the presence of the jury:)

THE COURT: Doctor, if you wouldn't mind, if you would step outside of the courtroom for a moment?

THE WITNESS: Oh, sure.

THE COURT: You can be seated.

All right. Motion in limine number 2, which was granted and applied to all side's experts, prohibited any witness from giving their opinion that the conduct was or was not malicious, oppressive or fraudulent.

Mr. Reid.

MR. REID: Or otherwise reckless, your Honor. And -- and --

THE COURT: Well, what do you mean "or otherwise reckless"?

MR. REID: Well, the -- the -- the motion in limine also referenced specifically not to opine that conduct is malicious, oppressive or fraudulent as defined in Civil Code 3294 or otherwise reckless, which is also a term that the Court will be defining, um, in the jury instructions. Um, the -- the conscious disregard of the rights and safety of others is the definition of reckless which the Court will be -- is a definition, and that is what the Court will be instructing the jury. That's a determination for the jury to make. It's -- that's not an area in which, um, I -- I believe experts should be opining. It's the ultimate question for the jury based on the definition that the Court gives.

THE COURT: All right. Ms. Clement?

MS. CLEMENT: I don't see that Dr. Locatell used any such language, malicious --

THE COURT: Used what?

MS. CLEMENT: Used the "language malicious, oppressive or fraudulent" or the term "reckless" at all in any of her testimony or just now. And I'm reading the Court's ruling on motion in limine number 2, and I don't see anything in there that Dr. Locatell did anything to violate that.

THE COURT: Mr. Reid, the language that you were specifically referencing "conscious disregard of the rights or safety of others", as Ms. Clement points out, was not specifically included either in the language of the motion -- I have to go back and check it -- nor did I use that phraseology in my tentative, nor do I recall any specific argument about adding it to it.

You are correct that 3294 requires that there be a conscious dis -- one -- one of the possible ways to get to it would be that an employer had advanced knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages, etcetera, are involved.

I think you're accurate. Had you pointed out that specific language to me as part of the motion, I would have included it as part of the motion at the time. It's not there so I cannot specifically fault anyone for not advising their client or witness not to speak about it. But, um,

Ms. Clement, that is an ultimate -- while an expert can opine on the ultimate issue in a case, meaning, was somebody negligent or not, and she clearly has given us her opinion with respect to that, whether or not something rises to the level of malicious, oppressive or fraudulent or is, in fact, a conscious disregard of someone's rights is ultimately a jury determination.

So when she comes back in I am going to instruct the jury to -- um, I'm going to strike the language about, um, "conscious disregard for the rights or safety" as requested by Mr. Reid, and I'm going to give you a moment to step outside and talk to her and tell her to avoid that language, "malicious, oppressive or fraudulent" as well, okay?

MS. CLEMENT: Okay.

THE COURT: All right. Why don't you do that now?

MS. CLEMENT: Right now?

THE COURT: Yes

MS. CLEMENT: I thought you wanted her to come in and tell her that.

Okay.

THE COURT: Okay. You can bring her back in.

MS. CLEMENT: Oh. She said she had to wait for Terrance. I said to come back in and she said she had to wait for Terrance. That is what she said.

Are we on the record right now?

THE COURT: Yes, we are.

MS. CLEMENT: Okay. Never mind. It wasn't a joke, but do you remember we had one witness who always had

Terrance come over and get the exhibit binder for her and turn the page for her? That was really cute. That was Ms. Woodlee.

THE COURT: Come on up to the stand. Thank you. Have a seat.

So I want to advise you of a ruling that I've made. There -- I have made a prior ruling about any expert, not just you but any expert in the case, giving testimony using the language "malicious, oppressive or fraudulent." There was no specific ruling on the language "conscious disregard." However, after hearing from Counsel I agree that that specific language is not something that an expert should opine upon, that is a jury decision.

So from this point forward, if you would please avoid those words "conscious disregard of the rights or safety of others", as well as "malicious, oppressive or fraudulent", I would appreciate it. Okay?

THE WITNESS: Yes.

THE COURT: Okay. Let's bring the jury back in then.

(The following proceedings were held in open court, in the presence of the jury:)

COURT ATTENDANT: All right. Come to order. Department 45 is back in session. You may be seated.

THE COURT: Ladies and gentlemen, as part of your role in this trial you are going to be asked to make some decisions about the conduct of Emeritus. And there will be certain words that will be described to you as part of your jury instructions and defined for you under the law. And

the decision as to whether or not the conduct fits into any of those particular categories -- and you'll learn about them later -- is yours and yours alone to make.

So I've granted the motion to strike the words "conscious disregard of rights" because that's a decision you're going to make later on. In all other respects, the testimony of this witness remains, okay. Thank you.

Ms. Clement.

MS. CLEMENT: Thank you, your Honor.

Q (By MS. CLEMENT) Dr. Locatell, can you tell us why you feel like it's Emeritus' failure that caused the neglect of Mrs. Boice?

A Based on all of the information that is available to me in my analysis of how this facility was operated, it -- it started at the top and at every layer where Emeritus had responsibility for oversight of this building they failed.

Q Did you have any concerns about the fact that Emeritus continued to accept residents after the Mary Kasuba letter without any change in the practices?

MR. REID: I'm going to object. That's 352. It's also not relevant, and I don't think it's within the scope of expert opinion.

THE COURT: It's my understanding at this point the witness is testifying on the standard of care as well as the facts in the case and whether or not it fell below the standard of care, correct? Is that your understanding as well?

MR. REID: Standard of care with respect to Ms. Boice.

THE COURT: She can answer.

THE WITNESS: Yes.

Q (By MS. CLEMENT) What's your opinion in that regard?

A Emeritus was responsible for addressing Mary Kasuba's concerns and making sure that those problems were fully rectified before taking in anymore residents is my opinion.

Q Now, um, Mrs. Boice was transferred from Emeritus on December 4th and went to the Foothill Oaks convalescent hospital; is that your understanding?

A Yes.

Q And can you briefly describe for the jury what her course was at Foothill Oaks?

A Yes. When she first arrived, um, she was capable of very little, if any, communication. She was evaluated by physical therapy, occupational therapy to see if they could address some of her, um, profound disability and she was not capable of participating in any kind of therapy at the nursing home.

A speech therapist evaluated her and found that she did, in fact, tend to pocket food, which means she held it in her mouth. But when the texture was changed to pureed foods -- the puree is food that is regular food that is blended -- um, she did better. But then she ultimately would pocket the pureed foods, so the diet was changed to a liquefied puree and they added some nutritional enhancements to it. But she could drink liquids and she could consume the food.

Um, she was in pain. She got pain medication. Um,

her morphine dose was doubled when she arrived. She, um, got extra morphine, um, after that. Although by the end of December her pain seemed to have been diminished and the wounds started to look better. Some of them did improve. There was smaller, clean, showing signs of healing.

The, um, right ischium wound did not. That continued to get worse. It doubled in size. It became deeper. It went to the bone. It went to a depth of -- of four and a half centimeters, which is about this deep (indicating).

She maintained her weight for the first few weeks, about 120 pounds, but then her oral in-take was dropping off. She developed a urinary tract infection. About a week before she died she just stopped eating or drinking anything. And they increased the morphine and she got morphine on a regular basis, every two hours, and she went unconscious and she died.

Q Do you think that Emeritus was responsible for Mrs. Boice's death?

A Yes.

Q And do you -- um --

(Discussions were had between attorneys.)

MS. CLEMENT: Terrance, we would like to look at the death certificate.

I asked Counsel to stipulate to moving into evidence 5019, your Honor, the death certificate.

THE COURT: All right. 5019 is admitted.

(Joint Exhibit 5019 was marked and admitted into evidence.)

MS. CLEMENT: Thank you.

Q (By MS. CLEMENT) Okay. So here's her death certificate.

And, Erik, can you get us just right -- zoom in on the highlighted area first?

A If you can make it even bigger because that writing is small and I --

Q Yeah. Just start -- can you explain, while we are waiting, how a death certificate is supposed to be filled out?

A Yes. There are -- there are two main parts of the death certificate that the doctor who certifies the death has to fill out. And the first main part is these four lines, A, B, C, D. And if you need more lines you can add in more as the doctor certifying it. And these are the immediate causes of death. If there is only one, then there is one item on the -- one of those lines.

This section is the other section, and these are other significant conditions contributing to death but not related to any of the conditions on this section of the -- of the death certificate. And if we had it blown up you could read that. But this section actually instructs the physician how to complete this.

And it's unfortunate, again, and you would be surprised by this, but physicians do not receive training on how to complete death certificates accurately. There is a large body of medical literature that talks about this and it's just not taught.

Everyone dies of cardiopulmonary arrest. Your heart

stops and you stop breathing, so you don't put this on a death certificate. Everyone dies from their heart stopping and they stop breathing, which is what cardiopulmonary arrest means. So this doesn't belong up here. And it's not just me saying this, you can look it up, um -- well, you can't, but you could look it up and see that it's not appropriate to go on the death certificate but a lot of doctors put it down there. So she -- and within minutes she was dead when her heart stopped and her lungs -- she stopped breathing.

Now, Dr. Awan put that her -- her death was due to Alzherimer's disease, and I disagree with that for the reasons that I explained earlier. Alzheimer's dementia doesn't cause -- directly cause death. It's not a immediate cause of death. Here she put hypertension. Well, the way you are supposed to do this is the underlying cause is supposed to be listed last. So the way she completed this, she said that hypertension caused her Alzherimer's disease. And -- and if you could read that language right there on the side there you -- you would see it's sequential. So she didn't complete it accurately.

Did hypertension contribute to Joan Boice's death? I don't think it did. I don't think she died from a stroke. Hypertension causes strokes. I don't think she died of a stroke. Was it a contributing factor even? I wouldn't have put it on the death certificate.

Now, Dr. Awan also put pressure ulcers, vertebral compression fractures, osteoporosis, and urinary

incontinence. That I agree with because osteoporosis caused compression fractures which impaired her mobility.

And really she died of malnutrition, dehydration. She stopped eating and drinking. And her family had decided they didn't want to prolong her life. She didn't want her life prolonged by artificial feeding. Joan Boice had put that in her advanced directive that she completed in 2004, that she didn't want to be kept alive if she had an incurable disease that was -- that would be expected to take her life in a relatively short period of time. So she died of not eating and drinking and that was caused by dysphagia and maybe some other things. And we don't know precisely because there were no lab tests done.

We know something she didn't have, she didn't have a fever, she didn't have signs of pneumonia, she didn't have a low oxygen and fast respiratory rate and things you would see in pneumonia. We don't know exactly what she died from, she just faded away.

But pressure ulcers I do agree was a substantial causative factor in bringing about her death for the reasons that I described and not only that, it -- it was neglect. Now, if a doctor puts neglect on this thing, it ends up kicked out to the Coroner's office and all heck breaks loose. And usually the Health Department calls you up and says, you can't put that on a death certificate.

But, in any case, um, the combination of the weight loss, the pressure sores, the contractures, the loss of function, the withdrawal, the no activities, the mental

debility, as well as the physical debility caused her to give up life is my opinion. And was it a natural death? Well, that would be for the medical examiner to opine on.

Q Dr. Locatell, do you have an opinion -- thank you, Terrance.

Do you have an opinion as to if Joan had received proper care at Emerald Hills like she was receiving at the Palms as to what her life expectancy would have been?

A Yes. Um, at -- at age 81, um, 82 when she died, um, 82 year old's have a life expectancy and it's different than the life expectancy at birth. If you get to be 82 you get a bunch more years if you're an average white female.

Now, in her case she -- she didn't have any life limiting illnesses except for the dementia, and dementia would shorten her life expectancy. And it's -- it's -- it's an inexact science, but there is some science behind it. And, um, we have various epidemiological data life tables that show us the average 82-year-old white female, um, can expect to live an additional eight years. That's all comers, people who are really sick and people who are very healthy. So the average has eight years.

Well, generally someone with dementia in the moderate stages it's going to be half that, so three to five years would be an estimate because she doesn't have any really other serious chronic illnesses that I would expect to shorten her life sooner.

Now, some people say, well, I wouldn't want to live like that, but you don't get the choice. Your body lives

on. Your brain is slowly destroyed by the disease but you still have awareness, you have consciousness, um, until very late in the process of becoming end-stage with the disease. It's not, um -- it's not something that we can pass a judgment on whether she would want to live that many more years, but her body, I think, would have lived on.

Q So it's your opinion to a reasonable degree of medical certainty that if Joan had not been neglected she would have lived three to five more years?

A Correct.

Q And can you tell the jurors what is elder abuse?

MR. REID: Well, I think that -- I think that calls for, um, a statement of the law within the purview of the Court as phrased.

THE COURT: Could you rephrase the question, please?

MS. CLEMENT: Yes, your Honor.

Q (By MS. CLEMENT) We have heard a lot of testimony and questioning of witnesses about being mandated reporters of elder abuse. Would it be possible for you to explain to the jurors what that means?

A Yes. In medicine, um, and in nursing and in health sciences and health professions, we -- we educate on elder abuse. We study elder abuse. We define elder abuse as one of four or five things: Physical abuse, neglect, emotional abuse, sexual abuse, financial abuse. Each one of those types of abuse constitutes elder abuse in medicine.

If we have a suspicion that one of those things is happening, we are required as health care providers to

report that. That's what being a mandated reporter means, just like health care workers are mandated reporters of child abuse.

Q Um, did you read testimony about questions being asked as to the, um, employees of Emeritus as to why, um, as mandated reporters they failed to report Mrs. Boice's conditions?

A I did.

Q And do you have an opinion based upon your experience and expertise in this area as to, um, what level of reporting actually takes place with regard to, um, the reporting of elder abuse?

A This has been studied also and it is known that elder abuse is very under-reported among all health care professionals in all states. All states, to my knowledge, have mandatory reporting laws and yet the number of reports relative to our estimates and our studies of how prevalent elder abuse is we know it's not being reported.

And most states also have laws to prosecute people who don't report and there are even fewer prosecutions, if any, of health care workers who fail to report. You know, 30, 40 years ago child abuse was in that straits. Elder abuse is where child abuse was 30, 40 years ago. So the awareness is not there. Physicians, nurses, others don't receive training, they don't receive guidelines on what abuse is and how it should be reported when it's suspected.

And in this case I believe it was the Kaiser nurses, at least, who testified that, well, I had no idea there was

no staff in the unit overnight on these dates. I didn't know any of these things about Emeritus and if I had known, I would have reported it.

Q Dr. Locatell, have you reached any opinions with regard to, um, the defense expert, Dr. John Fullerton, who said in his deposition that Emeritus effectively turned their health care decision-making over to Kaiser and they didn't need to comply with the regulations after November 6th?

A I completely disagree with that. Kaiser home health went to the facility. Um, the nurses that finally got involved instructed the caregivers on how to do wound treatment. Well, the nurses didn't know that those caregivers couldn't do wound treatment, that that was in violation of the standard of care and of Title 22. Um, Kaiser home health was in there, you know, every three days, every four days, for maybe an hour. An hour altogether is what they charted. So out of the total amount of time that people are looking after Mrs. Boice, you know, Kaiser home health is teeny tiny.

And even if Kaiser, as it happened in this case, for some reason a nurse didn't go after Dr. Awan said, We need to go, come up with a wound treatment plan for this foot, and for whatever reason only a physical therapist came, not a nurse, well, Emeritus can't sit back and go, well, there is no nurse, so I guess we are not going to do anything about the wound. You can't say that the facility just turns it over to someone and then puts on the blindfolds. That's

not standard of care.

THE COURT: We need to stop at this point.

Ladies and gentlemen, leave your notebooks on the chairs. Remember the admonitions. I will see you Monday at 9:00 a.m.

Terrance, they have their parking and everything?

COURT ATTENDANT: Yes, ma'am.

THE COURT: I believe next week is a full week. We will see you then. We are in recess.

(The following proceedings were held in open court, outside the presence of the jury:)

THE COURT: All right. Please be seated. I understand there is a issue regarding availability. Is that something I need to talk about?

MS. CLEMENT: Yes.

THE COURT: Okay. What is the problem?

MS. CLEMENT: Well, Dr. Locatell has a commitment with Operation Guardian to go to Los Angeles next week starting on Monday. I thought that we would be able to start her this morning at 9:30. I actually thought we would be to her a lot earlier, and she has been kind of on ice waiting for all of this so...

THE COURT: So what's -- what's the proposal here?

MS. CLEMENT: The proposal is that she come back on February 11th.

THE COURT: Mr. Reid?

MR. REID: Um, I think that is -- I do object to that. I am confident that -- it sounds like Ms. Clement is pretty

much wrapped up. I am confident I can finish in an hour on Monday. I'm confident that we could have Dr. Locatell on the road by noon.

And, um, I think that just in terms of the -- the flow of the case, um, fairness to the parties and the jury, um, that would -- I think that would be the most appropriate way. And I hate to inconvenience Dr. Locatell, but, um, that would be my request, your Honor.

THE COURT: Dr. Locatell, could you explain to me what this is that is going on in Los Angeles, please?

THE WITNESS: Um, it's some inspections with the team, the State of California Department of Justice, um, myself, um, agents from Sacramento, personnel from southern California flying into San Bernardino for two days of inspections, um, returning on, um, Thursday.

THE COURT: Flying in Monday and returning on Thursday?

THE WITNESS: Yes. And my flight on Monday leaves at 1:50 p.m. Now, I would be willing to come in in the morning, but I would need to leave here by 12:50 to catch my flight.

THE COURT: Okay. Let me just ask --

MS. CLEMENT: Don't you have to be there at 12:50?

THE WITNESS: Well, it's Southwest --

THE COURT: She would be out of here by noon because there will be a lunch time.

MS. CLEMENT: Oh, Right, right.

THE COURT: Assuming we can do that.

But, Ms. Clement, could you estimate for me how much more you have on your direct with this witness?

MS. CLEMENT: Ten minutes. When I spoke with Mr. Reid about it off the record he said that he would commit to an hour but then we thought, you know, the jurors have so many questions, you know.

THE COURT: Okay. An hour?

MR. REID: That's a very fair estimate, your Honor.

THE COURT: Are we all willing to commit to the fact that we will get her out of here at noon, even if that means being judicious about the questions that are posed to her from the jury?

MS. CLEMENT: Yes.

MR. REID: Most definitely, your Honor.

THE COURT: All right. Then we will promise to release you at noon on Monday.

Will that work for you?

THE WITNESS: That will work.

THE COURT: All right. Thank you very much. You are excused until Monday.

THE WITNESS: Thank you.

MS. CLEMENT: Thank you, Judge.

THE COURT: What that means for us is that we need to get going on the dot at nine o'clock on Monday morning. I'm going to note Ms. Clement says ten minutes, Mr. Reid says one hour.

MS. CLEMENT: And our jurors will have an hour.

THE COURT: And what I might do is talk with our court

(The following proceedings were then had in open court, in the presence of the jury.)

COURT ATTENDANT: All rise. Department 45 of the Sacramento Superior Court is now in session. The honorable Judge Judy Hersher now presiding. You may be seated.

MS. CLEMENT: Thank you, your Honor.

CONTINUED TESTIMONY OF

KATHRYN LOCATELL, Witness called on behalf of the Plaintiffs,

RESUMED DIRECT EXAMINATION

By LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of the Plaintiff:

Q Dr. Locatell, when we ended on Friday we were talking about Dr. Fullerton, the Defense expert's opinions in the case. And one of the things he testified to in his deposition was that the Title 22 does not establish the standard of care. Do you agree with that?

A No.

Q Can you tell the jurors what does establish the standard of care for residential care facilities for the elderly?

A I believe Title 22 establishes the standard because the facilities are licensed under Title 22 and they agree to comply with Title 22 as a condition of their licensure. So at a minimum they need to meet the standards set forth, the regulations in Title 22 because that's what governs what they do and how they do it.

Now, each facility can also develop policies and

procedures. And the policies and procedures set the standard for that facility, if the facility chooses to have those. They are not required to have them but if they do, that would be another source of the standard that the -- that the facility, um, is required to follow because policies and procedures are requirements for staff to follow.

Then the third element where you could say what is the standard it's what's similar communities do under similar circumstances, um, and that's called the community standard of care. And, you know, we have some evidence in this case that at least with the Palms we see what their standard was and how they provided their care. And my opinion is that care met the standard. So if -- if the Palms is an example of a community standard, then we can apply those standards against Emeritus and decide whether or not Emeritus met that standard.

Q Now, you read the deposition testimony of the Defendant's medical experts, Dr. Fullerton, Dr. Tindall and nurse Ransbury, correct?

A Yes.

Q And did each of them testify that Emeritus did not fall below any standard of care?

A Yes.

Q And do you agree with that?

A No.

Q Dr. Fullerton also gave the opinion in his deposition that all of Mrs. -- Joan Boice's bed sores were the result

of skin changes because she was at her life's end. Do you agree with that opinion?

A I do not.

Q And can you tell us why?

A Yes. First of all, because in November of 2008 she was not near her life's end except because she had become severely disabled as of November 6th from the failures that I talked about the last time.

Now, medically speaking, um, was she at the end of her life? Well, she lived another three months after that. And when you're talking about skin changes at the end of life, you're talking in the last days before death, or weeks. You're not talking three months.

And, in fact, we do have some evidence that in end-of-life care in Hospice care that pressure sores are actually less common among individuals who are provided with preventive care. Now, there are some times in Hospice that the goal is not to prevent or treat bed sores, but the majority of patients in Hospice do not develop beds sores like Mrs. Boice developed.

So my own observation from treating patients is that dying people do not all of a sudden have bed sores pop up. And if you look at -- we don't have a lot of studies and evidence about this, but if you look at where do people die, they die in hospitals. What health facility has the lowest incidents of bed sores among any health facility, hospitals. So, to me there is no medical evidence that dying makes all of a sudden you get bed sores wherever.

So I completely disagree that Mrs. Boice's bed sores that she developed in, you know, October, November 2008 were due to her being on the cusp of dying.

Q Now, Dr. Fullerton also testified that there are new techniques to use definitively -- excuse me -- new techniques which definitively can be used to prove Alzheimer's disease while someone is still alive. Do you agree with that?

A No.

Q And why not?

A Well, there are studies being done about techniques to try and identify which people have dementia from Alzheimer's disease versus other kinds of dementia, but these techniques are purely investigational. They are not in clinical use as of today. They are not -- they certainly weren't in clinical use as of 2008.

And Alzheimer's disease, you know, was first described in the early 1900s by the pathologist who studied brains of people who died with a dementing illness, and the hallmark is these certain plaques that develop in the brain. And the only way currently we can clinically be sure that someone has Alzheimer's disease versus some other kind of dementia is at autopsy. When the person dies, a brain autopsy to look for those characteristic changes in the brain.

Now, it's -- it's important for us as clinicians to figure out what type of dementia this is because it affects their prognosis. So if someone has what looks to be Alzheimer's disease, we can guide the family that this is a

long process, it's a slow process. Whereas if we find some other type of dementia that might be more rapidly progressing, then that also needs to be communicated to the -- to the patient, if the patient can understand, and -- and the family so that plans can be made about that person's future.

Um, again, going back to what we talked about last time, in Joan Boice's case we have evidence that she really didn't change much at all over those 18 months before she got to Emerald Hills. And that's one of the main reasons that I think she had Alzheimer's disease, even though there is no definitive test for that.

Q Now, switching to a different topic. Under Title 22 does Emeritus have to provide sufficient funding for its facilities in resources so that they can meet each of the residents' needs?

A Yes.

Q Did you see any evidence that, um, Emeritus at Emerald Hills was underfunded?

A Yes.

Q Did that fall below the standard of care?

A Yes.

Q Now, I would like to talk a little bit about Joan's suffering and her pain while she was at the facility. And in order to do that I would like to show some photographs, um, that we have from -- Exhibits 5001 and the Defendant's exhibit -- can you tell me that number, Ashley? 5011 and also exhibit --

(Discussions were had amongst attorneys.)

MS. CLEMENT: Start with those two exhibits. Yeah, Exhibit 48.

And I believe those have all been moved in.

THE COURT: They have.

MS. CLEMENT: Thank you, your Honor.

Q (By MS. CLEMENT) So this first photograph of Joan --

THE COURT: With one exception. I apologize. 5011 has not been moved in. 5001 has, 5008 has, but not 5011.

MS. CLEMENT: Do you have any objection to moving in 5011?

MR. REID: No, your Honor. No objection.

THE COURT: Okay. 5011 is admitted.

(Joint Exhibit 5011 was marked and admitted into evidence.)

MS. CLEMENT: Thank you.

Q (By MS. CLEMENT) So can you tell us about this picture and what's important, Dr. Locatell?

A This is a picture taken of Joan when she moved into the Palms. And you can see she's making eye contact with the camera, she is smiling, she looks just like you would expect her to look.

Q This picture was taken on October 22nd, 2008, at Emerald Hills.

THE COURT: What is the number of this exhibit, please?

MS. CLEMENT: This exhibit is number 5011, your Honor.

THE COURT: All right. Thank you.

MS. CLEMENT: Uh-huh.

THE WITNESS: Well, to my eye in this photograph her face looks thinner. Um, photographs aren't really all that reliable for determining someone's lost weight, but you can see that she's also making eye contact with the photographer and that she is smiling and her face looks, um, symmetrical to my eyes.

Q (By MS. CLEMENT) And what is the importance of that, the symmetry of her face?

A As we spoke about, um, last time, when someone has a stroke, that knocks off part -- part of the brain and it affects one side of the body. Generally you'll see some changes on -- on the face, especially if that stroke also impairs swallowing.

Q And now to Exhibit 48, Erik. It's hard to see.

(Joint Exhibit 48 was marked for identification.)

THE WITNESS: The light from the, um, outside is shining on it, but her face clearly looks much, much thinner.

THE COURT: Did you say this is Exhibit 48?

MS. CLEMENT: Yes, your Honor.

THE COURT: It is not yet in evidence.

MS. CLEMENT: Oh. We had stipulated to that coming in. Is that proper, Mr. --

MR. REID: I will stipulate, your Honor.

THE COURT: All right. So 48 is admitted.

(Joint Exhibit 48 was admitted into evidence.)

MS. CLEMENT: Thank you, Judge.

THE WITNESS: In this picture her, um, her bones of

her face are more well defined, which is what you see when someone has lost weight. And, um, to me she looks, um, distressed relative to the other pictures. Now, she wasn't posing for this and it was taken, um, along with the wound photos that we also saw at that same time. Again, I don't see a droop on one side of her face.

Q (By MS. CLEMENT) Other than the pressure ulcers, Dr. Locatell, did Mrs. Boice have any other source of pain as a result of what you've described as neglect at Emeritus?

A Yes. Well, we know that she had pain in her right foot on October 14th that was more frequent and intense pain that, um, prevented her from bearing weight on her foot. We have no information about what her pain was like after that day or -- or before that day, we just have that one point in time. But, um, it -- it's very possible that that pain was from the ulcer on the foot. Um, so she had pain from that.

And we know that the bed sores themselves are painful. And there is some evidence when she was admitted to Foothill Oaks that she actually said her left heel hurt.

Um, she had developed contractures, which is the limbs remain flexed in -- in one position from not being moved. And if you have ever had -- had a joint casted, you've experienced this yourself. When the cast comes off, it's very difficult to move that joint. So when the joint is fixed like this and then it's tried -- you try to move it, it's, it's painful. It's very painful to try and stretch, um, those muscles out.

So contractures, um, which she was documented as

having November 6th and subsequently are painful conditions if -- if you move the person's joint. Now, if you don't move their joint it's going to continue and it could get worse. So you need to try to move the joints to relieve it, um, and that process, um, can be painful.

Q Can you tell us, Dr. Locatell -- we know that the October 14th order to have the x-ray of her right foot and ankle was not completed and the doctor was notified of that.

Did you see any evidence in the chart that Emeritus made any effort to contact Dr. Awan or anyone to seek more pain medication or a different pain regime to address Mrs. Boice's more frequent and intense pain?

A No.

Q Okay. Moving to another topic and that was the staffing. And you talked about some staffing, um, understaffing throughout her stay at the facility, and I just want to drill down a little bit on some of those key dates. You had testified that there were dates in the facility where there were only two people in the entire building on the night shift. I would just like to confirm with you what those dates were.

Were those dates September 30th?

A Yes.

Q October 1st, 18th, 25th and 30th?

A Yes.

Q November 17th -- excuse me. November 7th and November 30th?

A Yes.

Q And December 1st?
A Yes.
Q And there were dates that you indicated that in the Memory Care Unit throughout her entire time there was only one caregiver but on some nights there was no one; true?
A Correct.
Q And the dates there were no one appeared to be November 15th, part of November 16th, the 23rd, and the 30th?
A Correct.
Q And were those dates from October forward dates where Joan actually needed more care?
A Yes. Relative to what she needed when she was admitted.
Q Okay. Now, prior to accepting Joan Boice did you feel like Emeritus met the standard of care as it related to their responsibility for gathering information and doing assessments of Joan before they accepted her?
A They did fall below that standard of care, yes.
Q Did you see any evidence that they ever met Joan before accepting her?
A They did not.
Q Did they get a recent physician's report before accepting her?
A No.
Q Do a functional assessment of her condition?
A No.
Q Assess her care needs?

A No.
Q Develop a care plan for meeting her needs?
A No.
Q Do a pre-placement appraisal of her?
A No.
Q Now, prior to accepting Joan did they hire enough staff to meet her needs?
A No.
Q And the needs of the other residents?
A No.
Q Did they train the staff to meet the residents' needs?
A Definitely no.
Q Did they make sure there was enough staff on each shift to meet the residents' needs?
A They did not.
Q Did they make sure there was enough staff to operate a safe facility?
A No.
Q Did they -- did you see evidence that they were supervising either the caregivers or the directors?
A No.
Q Now, you talked about re-appraising Joan or reassessing her. Was that part of the standard of care?
A Yes.
Q And those reappraisals had to be in writing in the record; true?
A True.
Q Did they -- see any evidence that they re-appraised

Joan after she fell on October -- excuse me -- September 22nd?
A No, they did not. And, furthermore, when they did reappraise her they were required to update her care plan, and they didn't even have a care plan.
Q After Joan was no longer walking did they reappraise her?
A No.
Q When she needed more care did they reappraise her?
A No.
Q When she had uncontrolled pain in her right foot did they reappraise her?
A No.
Q When she got the pressure sores did they reappraise her?
A No.
Q Did that all fall below the standard of care?
A Yes.
Q When she acquired these conditions was Emeritus required to transfer her to a higher level of care?
A Yes.
Q Did they transfer Joan when she was still bedridden?
A No.
Q When she got the stage 2 pressure ulcer?
A No.
Q The stage 3 pressure ulcers?
A No.
Q When she became totally dependent on the staff for

eating?
A No.
Q When she became totally dependent on the staff for all of her activities of daily living?
A No.
Q Did that fall below the standard of care?
A Yes.
Q When Joan's condition changed as you've described it over the course of her time at Emeritus, was Emeritus required to notify both her family and her physician?
A Yes.
Q Did Emeritus notify her physician of all of Joan's changes in condition?
A No.
Q Did they notify the family of all of her changes in condition?
A No.
Q Did they follow all of her doctor's orders?
A No.
Q Did they reappraise Joan after each of Joan's changes in condition?
A No.
Q Did they develop a care plan after each of Joan's changes in condition?
A No.
Q It has been testified to by Budgie Amparo that Mrs. Joan Boice's evaluation done by Peggy Stevenson after she was admitted on September 12th, 2008, was a care plan.

Was that a care plan?
A No.
Q It's also been testified to that this document called Vigilan was either a care plan or some kind of an assessment. Do you have an opinion as to whether that was true?
A Yes.
Q And what is your opinion with regard to the Vigilan?
A My opinion about the Vigilan is that there is no evidence that shows that it was ever in place to help take care of Joan Boice during the time that she resided there. It was not in her paper chart. Um, the only copies we have of it were produced in 2010. That is dated on there. We don't have any earlier copies. Um, whether it was done or not -- if it was done and it was in a computer, well, it never got communicated to staff. And the facility never went over it with -- with Mrs. Boice's family. So it didn't even meet the standard for being a care plan if it was in existence in 2008.
Q And does Title 22 require that prior to accepting a resident that the service plan be developed and discussed with the family?
A Yes.
Q And did you see any evidence that that Vigilan was ever discussed with the family?
A No.
MS. CLEMENT: Thank you. No further questions.
MR. REID: Good morning ladies and gentlemen.

CROSS-EXAMINATION

By BRYAN R. REID, Attorney at Law, Counsel on behalf of the Defendant:

Q Good morning, Dr. Locatell.

A Good morning.

Q We are aware you have an obligation this afternoon, and we have all agreed to try to move this along so we can get you out of here by noon. You know that?

A Yes.

Q And that's a two-way street, right? So you know how this works, I'm going to ask you questions and you're going to give me the answers.

A Correct.

Q All right. Um, and we will be as efficient as possible. All right?

A Okay.

Q And you know you've been doing this -- you've been serving as an expert witness for probably a couple of decades, haven't you?

A Since 1997. So that would make it 16 years now.

Q Okay. Sorry, I didn't mean to overstate it.

A It's almost two decades.

Q I'm off on the wrong foot so far.

Um, and you've testified probably hundreds of times I would assume; is that true?

A In deposition, yes.

Q Um, and -- and in terms of your relationship with, um, Ms. Clement, um, you -- you've been working with her since

1997, right?
A Correct.
Q I think you told us in deposition that you've reviewed every case that she's taken in her career since 1997?
A That's correct.
Q The way it works is when Ms. Clement has a case that she thinks she would like to explore, she contacts you and you screen the case for her?
A That's correct.
Q Um, and in this instance, um, with regard to the Joan Boice case, um, Ms. Clement had contacted you by mid-December of 2008 to start getting your input about, um, whether there was -- should be, um, litigation pursued against Joan -- Emerald Hills, correct?
A Correct.
Q And, um, I do want to find out a little bit -- I know that you -- your, your clinical practice -- you don't have a clinical practice anymore. You don't see patients anymore, right?
A Well, I have a small clinical practice in that I still have one nursing home patient, and I also teach in a, um, free clinic in Sacramento and see patients there.
Q Okay. In -- in 2007, um, the -- the -- the bulk of your professional career became in consulting, um, as a, um -- on -- on litigated matters or as a consultant for the State, right?
A Correct.
Q Now, in deposition you told us that since 2007 half of

your work has been as a consultant for the State and half has been reviewing cases for attorneys for civil lawsuits, right?

A That's correct.

Q And, um, I think you told us the other day of that, those civil lawsuits, probably 95 percent of those you reviewed for, um -- at the request of a plaintiff's lawyer?

A Yes.

Q Okay. I want to ask you just a little bit -- a couple of questions, if you don't mind, about how your -- how your income is generated, okay. In terms of -- since 2007, since you've been working as an expert witness, is the -- the substantial majority of your income derived from acting as an expert witness?

A Well, not necessarily acting as an expert witness but consulting in civil lawsuits. Um, I actually get paid more than when I do government work. So even though my workload is about 50/50, the civil work subsidizes the government work.

Q What percentage of your income since 2007 has been reviewing lawsuits for attorneys, um, in civil litigation?

A I would estimate it's probably 75 percent.

Q How many cases have you reviewed for, um, Ms. Clement since you started working with her in 1997?

A Oh, boy. A hundred, more maybe.

Q In this case -- since you started working on the case in December of 2008, um, have you played an active role in in working up the case since then?

A Um, yes and no. When -- when I first got involved in the case I -- I looked at photographs and I said, We need to get the records so that I can evaluate what happened. And then it took, um, I don't know, close to a year before we got records. So I was involved in reading those records and saying, look, these are not the right records and we need more records.

And then in the fall of 2011 I was asked to review a whole bunch of discovery materials in order to prepare a declaration for a motion Ms. Clement had made in the case. So at that point I became more aware of, um, things outside of the medical realm, if you will.

Q So I think you told us last week that you've reviewed over 60 depositions and all of the exhibits to those depositions; true?

A Well, I don't know about all of the exhibits, but a number of them.

Q You've done your best to get through whatever you've been provided, right?

A Correct.

Q Um, you've reviewed discovery documents, in other words, interrogatories and records produced in the -- in the lawsuit, correct?

A Correct.

Q And you've reviewed the Emerald Hills, um, files from the Department of Social Services?

A Yes.

Q So how many hours -- can you estimate for us how many

hours you've spent working on this case?
A I would estimate all together probably 100 hours, maybe more.
Q And that's from -- since -- since December of 2008?
A Correct.
Q Have you -- have you billed for your time so far?
A Um, up until what I've done recently to prepare for this.
Q And -- and have you been paid for those services up to that point in time?
A Yes.
Q Do you remember -- so you did the bill -- do you remember how much the bill was for?
A I have done, you know, many bills on the case over those years. And, um, um, again, an estimate, probably 60 hours by the time I finished the declaration I wrote in 2011.
Q Okay. And you charge Ms. Clement $500 an hour?
A Correct.
Q Um, okay. So kind of setting the -- the stage of where -- where you have criticisms and concerns and where you don't. It sounded to me like based on what you testified to last week that, um, the only entity involved with Ms. -- Ms. Joan Boice's care, um, at least based on the records you saw was, um, Emeritus and Emerald Hills, correct?
A Well, I did -- I do have criticisms of Kaiser home health, and I think I eluded to some of those last time I

was here.
Q You're not testifying, however, that anything that Kaiser, um, home health did was below the standard of care, correct?
A Um, well, if you wanted to ask me, yes, I do believe Kaiser, um, home health providers fell before the standard of care. I don't think --
Q How about --
A Excuse me. I don't think I have testified to that yet, but I do have that opinion.
Q How about Dr. Awan, do you think Dr. Awan fell below the standard of care?
A No, I don't.
Q Anybody else, um, other than the Kaiser home health nurses that in reviewing all of the records you believe fell below the standard of care?
A No.
Q So you don't have any criticism -- well, I'll say it a different way. You're not testifying that anything with regard to the Palms and the care they delivered was below the standard of care, correct?
A Correct.
Q Okay. And you're not offering any opinions that anything that happened at Foothill Oaks fell below the standard of care, correct?
A Correct.
Q And similarly, you don't think that the Palms or Foothill Oaks neglected Ms. Boice as you've defined that,

correct?
A Correct.
Q Do you think, um, that the Kaiser home health nurses neglected Ms. Boice?
A Um, in some respects, yes.
Q Have you, before today, shared those opinions with Ms. Clement?
A Yes.
Q When's the first time you remember telling Ms. Clement that you felt that the Kaiser home health nurses neglected Ms. Boice?
A Well, I don't know that I ever told her that, neglected, but, um, as soon as I got the complete Kaiser home health records, which was late in 2009, I -- I want to say or maybe even after that, um, because we got -- we got three different sets of those records and the third set that was complete we got with the custodian of record's deposition from Kaiser home health, and I can't remember the date of that. It might have even been March of 2010.
Q Okay. So getting records from Kaiser home health, there was multiple efforts to get the whole record from them?
A That's correct.
Q Okay. And once you had all of the records, that's when you determined that you thought that some aspects of Kaiser -- the Kaiser nurses' records were neglectful for Ms. Boice?
A Fell below the standard of care. The neglect aspect

is a little bit difficult just because, um, indirectly you could say neglect if those nurses weren't adequately trained to know that when they go in and look at a wound that they have to take off all of the clothes and look at the whole body and that they should do that every time they examine the patient.

Q Okay. Well, let's -- okay. Let's explore that because I remember you testified about that in your deposition. Ms. -- Ms. Badawiya took your deposition. Um, what we're talking about there is your opinion that a home health nurse that sees a resident or a patient at an assisted living community is required by the standard of care, um, when they are there to provide wound care to do a complete skin assessment every time they see the patient, right?

A Yes. I believe that's the standard. To really nail it down, I would need to see the policies for nursing at Kaiser home health but it's, in general, a standard in geriatric medicine and in wound care. If someone is at risk and they have one, you have to check them every time to look for more.

Q Okay. And so that we can move along quickly I'm not going to put all of those Kaiser records up, but I think you testified, um, on Thursday -- we know that the Kaiser home health nurses saw Mrs. Boice at Emerald Hills on November 19th, November 21st, November 25th, November 28th, and December 1st, right?

A Yes.

Q And they were there to provide treatment to, um -- at least until December 1st, to provide treatment to the wound that had been referred to as the bunion, correct?
A Yes.
Q Okay. And so the records don't reflect that on those -- one, two, three, four -- four visits before December 1st that the nurses did full body assessments when they were there, right?
A Correct.
Q Okay. And since they didn't chart doing a full body assessment, you don't know whether they did or they didn't, right?
A Well, I do because not documented, not done. It's not documented, it wasn't done. So it's -- it was important for them to have documented it if they did it. So I would stick with the evidence we have which is the clinical record.
Q Okay. But in reality either the nurses complied with the standard of care and did full body assessments and didn't find anything because they didn't write anything down, or they didn't comply with the standard of care and didn't do the body assessments, right?
A Correct.
Q Are there any -- other than that aspect then of the home health nurses and the assumption that they didn't do the full body checks on those multiple times that they saw Mrs. Boice, is there any other aspect of the home health nursing care from Kaiser that you believe fell below the standard of care?

A No.
Q So, um, I want to talk about the Palms for a minute. You -- well, I don't want to make an assumption but I will ask you this: When Ms. Clement contacted you in December of 2008, was it -- did you understand it to be your role that you were going to focus your review and determine whether someone should -- you think someone was negligent and focus only on Emerald Hills or were you going to look at the spectrum of who was providing care?
A I -- I look at the spectrum and I apply the same analysis to each health care provider.
Q Okay. So when you looked at the Palms' records you were looking at them with a critical eye to see whether there was some area in which they fell below the standard of care --
A Um --
Q -- correct?
A -- I don't know that I actually look at it with a critical eye, but as I'm reviewing it to find out what happened to the person, it's part -- it's integral to the process that I see if that was something bad that happened, that they did wrong, um, but it was more to find out how did she get to the point where she is at Emerald Hills and the events that happened at Emerald Hills and subsequently.
Q Okay. Now, the Palms records you've testified are quite complete and they have the care plans and the assessments and all of the things you would hope to see in an assisted living chart, right?

A Yes.
Q You didn't see any of the staffing, um, documentation, did you?
A Correct.
Q Okay. And you don't have any information about census or acuity or any of that, right?
A That's correct.
Q Okay. But you did notice that while during those 18 months or so that Ms. Boice lived at the Palms she fell six times, right?
A Yes.
Q Okay. And in -- on the last fall she actually broke her finger when she fell, right?
A Tip of the thumb, correct.
Q Okay. And so I think you testified before, just because someone falls in an assisted living doesn't necessarily mean that they are being, um -- that there is a violation of the standard of care, right?
A Correct.
Q Okay. And that's why you don't feel like the Palms fell below the standard of care, correct?
A Correct. And I would add one caveat, that's with the information I have available to me.
Q Right.
A If I had more information about the staffing and the the training of the staff and the supervision of the staff and the circumstances of the falls, because the circumstances of each fall were not well documented in each

case in -- in the Palms chart.
Q Okay. So you saw that there had been six falls at the Palms. Did you ask Ms. Clement to get that information about staffing and assessments and training?
A No.
Q But as you sit here you're not testifying that the Palms was below the standard of care or neglectful, correct?
A Correct. Based on my review of their records.
Q You know, um, talking about falls and sort of just as an aside, on Thursday you mentioned -- you mentioned Ronald Reagan, our former president. He had Alzheimer's disease, right?
A Yes.
Q And he actually fell and -- and had a hip fracture, correct?
A Correct.
Q And he is probably getting pretty good care, I assume, as a former president?
A One would hope.
Q Okay. So it happens, falls happen, fractures happen in the absence of negligence; true?
A Correct.
Q Now, the documentation itself, just based on the documentation the first evidence of any skin problems -- --
(Phone ringing.)
Q (By MR. REID) -- associated with Ms. Joan Boice occurred -- sorry. I will start over.
Um, when we look at the documents, and that includes

the Kaiser documents and the Emerald Hills documents, the first time there is any reference to any wound on Joan Boice's skin, other than the -- the issue with the -- that we have called the bunion, was November 30th of 2008, correct?

A Correct.

(Discussions were had between attorneys.)

Q (By MR. REID) November 30th of 2008, that's the first date of any document that reflects a wound on Ms. Boice, other than the bunion, right?

A Correct.

Q Okay. And then it was -- and the documents indicate that Kaiser was made aware of more skin issues with -- with Ms. Boice on November 30th, right?

A Correct.

Q And on December 1st that's when the Kaiser home health nurse came in and then made observations about additional wounds on her body, correct?

A Correct.

Q Now, help me here. I will put you on the spot. Did the Kaiser home health nurse come back -- did any nurse come back to Emerald Hills between December 1 and her transfer to, um, Foothill Oaks on December 4th?

A No.

Q You have served as a medical director for Hospice care, right?

A Yes.

Q And you have worked with home health agencies, right?

A Yes.
Q Were you a medical director for a home health agency?
A Yes.
Q Okay. And so you -- you know that the home health agency has the ability and the discretion to determine what care a resident, a patient needs in an assisted living community when they are called in, right?
A That I do not know.
Q Okay. If the Kaiser nurse on December 1st came in and assessed Mrs. Boice, the standard of care would be for her to make recommendations to Dr. Awan, correct?
A Correct.

(Phone ringing.)

THE COURT: Hold on just a second. Okay.

Ladies and gentlemen, that's our second phone in the first 40 minutes of the morning. Everybody please check their cell phones. The next one that goes off will be confiscated.

THE WITNESS: Better safe than sorry.

MR. REID: Okay.

Q (By MR. REID) I'm going to ask the question a different way. Having had experience with home health nursing, you know that, um, on occasion home health nurses will see patients in assisted living communities on a daily basis, right?
A Yes.
Q Okay. Sometimes they will see patients in assisted living communities more than once a day; true?

A Yes.
Q And the doctor -- the home health nurses work with the doctor to determine, um, how often a patient should be seen in an assisted living community, correct?
A Correct.
Q And the home health nurses work with the doctor to determine what kind of care should be delivered to the patient at the assisted living community, right?
A Correct. Although in reality the nurses figure everything out. They are there at the bedside and then they tell the doctor and the doctor says, yes, rubber stamps it. So, I mean, usually the doctor's involvement is pretty minor.
Q So in this instance on December 1st a home health nurse went to Emerald Hills and assessed Mrs. Boice's wounds, right?
A Yes.
Q And did she make a recommendation that, um, home health -- that Dr. Awan order more frequent visits with home health?
A No.
Q Did she make a recommendation, um, for different treatment for the wounds?
A Well, she had to initiate a treatment order for each of the new wounds, and she did that.
Q Okay. And, um -- now I'm going to ask you, because we went through standard of care criticisms, are you -- do you have -- is that below the standard of care for the home

health nurse?
A Um, I don't think so because when I look at the treatments that were ordered, um, they were ordered to be done every three days --
Q Okay.
A -- to the new wounds. Now, the foot wound still had a treatment order that was supposed to be done ever day.
And if you look back in the home health notes, the nurses were instructing the med techs, and sometimes they are referred to by name. Michelle, Michelle Riley, one of the med techs, was instructed on how to do this daily wound care. When they saw the new wounds they ordered treatments that could be done every three days instead of every day, but they --
Q Okay.
A -- obviously assumed, um, that someone was doing the daily wound care to the foot.
Q So wound care isn't necessarily something that's done on a daily basis. Depending on what the order is, it can be every other day or every three days?
A Correct.
Q Okay. So -- so on December 1st with the new wounds -- which, as I understand your testimony, are substantially similar to the pictures that we saw, um, that you testified about on Thursday, right?
A Correct. The documentation, description, size, um, is very similar.
Q Those wounds that we saw were, in your mind,

appropriately the subject of treatment every three days?
A Yes.
Q Um, now, I know that in your work as an expert witness you have certainly testified against assisted living, um -- let me say it a different way. I want to be fair.
You have offered opinions critical of assisted living communities, correct?
A Correct.
Q And you have offered opinions critical of skilled nursing facilities, right?
A Yes.
Q And you've offered opinions critical of acute care hospitals, right?
A Yes.
Q Um, you have probably offered opinions critical of physicians?
A Yes.
Q Um, and -- and none -- none of the -- none of the care providers in this hierarchy are perfect, are they?
A No one's perfect.
Q Okay. And one of the things you said in your deposition -- speaking of not perfect -- is, um, you're familiar, having reviewed hundreds of cases, that, um, charting errors are pretty common, right?
A Correct.
Q Okay. You don't expect to see a perfect chart, do you?
A That's correct.

Q But if -- if -- if there is an error in a chart, does that automatically mean for you that whoever the provider is, whether it's assisted living up to acute care hospital, that the provider is therefore neglect?
A Yes. Because strictly speaking the documentation is the record we have of events, the condition, the course of an individual. And if something is written in error, that is the standard of care violation.
And I believe I gave this example in my deposition, which is, why wouldn't we expect perfection in medical care? We should. Now, we can't always meet it. And if we don't meet it, it doesn't mean that a plane full of people crashes, but in aviation we don't tolerate mistakes. And we really shouldn't tolerate them in health care either. And it's akin to the mistakes that happen when the wrong body part is operated on or the person gets the wrong type of blood. That is due to a documentation error somewhere along the line.
Q Okay. We are not dealing with somebody that had the wrong body part operated on here, right?
A Right.
Q And we are not dealing with somebody who had got the wrong type of blood, right?
A Correct.
Q Okay. I want to understand, in every chart you've ever reviewed you've found a documentation error, right?
A That I couldn't say.
Q Okay. You can say that the substantial, substantial

majority of the charts you've reviewed you've found documentation errors, right?
A I don't know what you mean by that, but, um, they are common. You see them. If you look for them you might find them. But sometimes they don't jump out at you, and I couldn't say that it's 90 percent or even 70 percent. But when you see them -- things like charting on the patient who is no longer in the building, those I see all too commonly.
Q Right.
A And, um, those are the kinds of things which are demonstrably false. There may be other entries in the record that are either incomplete, they may have some inaccuracies, or more often you see things that were important that should have been documented but weren't.
Q Okay. So what I'm just trying to understand is, in those instances where there is a charting error you would testify that there is a violation of the standard of care, right?
A That's correct.
Q Um, one of the things that you -- well, in -- in terms of assisted living, which you've told us the other day is -- is -- is a social model, not a medical model, right?
A Right.
Q It's been your experience as a geriatrician that patients often times want to stay in an assisted living setting as long as possible, right?
A Correct.
Q And it's been your experience as a -- as a medical

director for Hospice, as a treating physician for aging patients, um, that -- that patients, when given an option, will often choose to live out their life in an assisted living setting, correct?

A Correct.

Q That is one of the benefits of Hospice, right?

A Correct.

Q You also told us in your deposition that from your experience, and I think, um, even studies, um, have determined that fol -- people who suffer Alzheimer's tend to decline more rapidly in a skilled nursing facility context rather than assisted living?

A Correct.

Q Now, um, just very quickly I want to talk about your opinion about staffing. I know you testified understaffed, I got that. Um, and then you testified to certain days where there was one or two people. I assume you haven't memorized that. Do you have in mind how many people were staffed every day or how -- how were you able to agree with Ms. Clement's questions?

A Well, um, when I myself reviewed the staffing documents, which included, um, assignment sheets for assisted living -- and I relied quite heavily on Emeritus' responses to discovery. And I recall seeing a table that listed by shift, um, and by date who was assigned to the Memory Care Unit. And I went through those dates very carefully and I compared them to the schedules. I actually wrote a table myself and I provided it to Ms. Clement. So

even though I don't have that precisely memorized, I'm very familiar with what I found when I did that kind of tedious, meticulous looking at it.

Q Okay.

A And what I testified Thursday, that, you know, November was really, um, very poor.

Q Right. I remember what you testified to. Um, my question is, you don't have it memorized, right?

A Right.

Q And you saw tables prepared by, um, Emeritus in response to discovery. That's part of what you relied on to form your opinions, right?

A Correct.

MR. REID: Your Honor --

(Discussions were had between attorneys.)

MR. REID: Your Honor, with -- with Counsel's permission, I would stipulate -- we have a stipulation to move into evidence Exhibit 5037 and 5038.

THE COURT: And have those already been marked this morning?

MR. REID: They were marked this morning.

THE COURT: All right. 5037 and 5038 are admitted.

(Joint Exhibits 5037 and 5038 were marked and admitted into evidence.)

MR. REID: I'm going to just very briefly put these in front of you and ask you a couple of questions and then we will move on, okay?

THE WITNESS: Okay.

MR. REID: May I approach the witness, your Honor?
MS. CLEMENT: Are they even in the binders?
MR. REID: I'm not going to worry about the binders.
Q (By MR. REID) Do you recognize Exhibits 5037 and 5038 being the tables that were prepared by Emeritus in response to, um, discovery that you reviewed in preparing your opinions?
A Well, um, 5038 I do. And 5037, it's dated September 30th, 2012, this I have not reviewed.
Q Okay. Fair enough.
A But this one, 5038, is dated May 5th, 2011, and this is the one that I relied on.
Q So those -- those two tables set forth the -- the staffing that could be recreated from the, um, the time -- time entries during the time frame that Ms. Boice was at, um, Emerald Hills, correct?
MS. CLEMENT: Objection, your Honor, it's incomplete. The question is incomplete. Those only refer to the Memory Care Unit.
THE COURT: Do you want to check this, Counsel?
MR. REID: Yeah. One was memory care. 5036 was, um --
THE COURT: 5036?
Q (By MR. REID) I'm sorry. 5038 is the Memory Care Unit, right? And then 5037, it's also the memory care. I apologize.
A Actually, I think 5037 looks like memory care, and I think that is assisted living.

Q Oh, you're right. You're correct. Thank you for correcting me.

So 5038 is assisted living side, 5037 is memory care?

A Correct.

Q And these would be then the people, um, who were providing care in the units, um, but those don't include the managers of the community that were working, right?

A Correct.

Q They don't include, um, let's say, kitchen staff and maintenance staff and the front office people, right?

A Correct.

Q Okay.

A Except there is housekeepers on here.

Q All right. Thank you very much. Pardon me. Keep moving forward here.

Um, so in -- in offering your opinion about the staffing levels, um, you haven't -- you haven't, um -- you didn't testify in your deposition about the number of residents in either side of the community during that same time frame, right?

A I don't recall.

Q And you didn't testify about the level of care needs of all of the residents of the building in your deposition, right?

A To my knowledge, and I don't recall.

Q And the number of residents and their level of care would impact upon how many staff need to be there to take care of the residents, right?

A Correct.
Q And in your deposition, understanding you've said that there wasn't enough staff, you didn't offer any opinion about how many staff needed to be working in order to comply with the standard of care, right?
A Correct, not in my deposition. But in my declaration --
Q Okay. Thank you.
A -- which was incorporated into my opinions, and I testified that I hold all of the opinions that I expressed in that declaration, even though I wasn't questioned about them.
Q I want to talk a little bit about the skin breakdown, okay. Um, you testified in deposition that you agree that not all wounds, um, are preventable, right?
A Right.
Q And not all stage 3 and 4 decubitus ulcers are preventable, correct?
A Correct.
Q There will be issues such as circulation, blood flow, that can affect whether wounds are preventable, right?
A Right.
Q And there will be issues such as patient preference, that maybe they don't want to be repositioned and that's one reason why there might be breakdown, right?
A Correct.
Q Okay. And so in order to form opinions about whether skin breakdown in any particular case was a result of care

below the standard of care you need to know all of the circumstances, right?
A Correct.
Q And you also -- now, as a little bit of an aside, you mentioned Christopher Reeves in your deposition -- or in trial on Thursday. Do you recall that?
A Yes.
Q And Christopher Reeves was the actor who played Superman in the movies, um, those back in, I think, the '80s?
A They are just replaying them now.
Q Okay. And Mr. Reeves was -- suffered a horrible accident where he fell off of a horse and broke his neck and became paralyzed, correct?
A Correct.
Q And then he became -- he became a spokes person for paralysis research, right?
A Yes.
Q Um, but ultimately it was a pressure ulcer that took his life, wasn't it?
A That's my understanding. Infection related to a pressure ulcer.
Q Right, right. And, um, presumably Mr. Reeves was getting pretty good care as well?
A One would hope.
Q Um, one of the -- one of the principles that you don't agree with, I think you may have testified to this, I know you did in your deposition, is there is this notion that as

as people age their organs can breakdown, right?
A Their organs can degenerate due to diseases, yes.
Q Right. And there is a school of thought that the skin is the -- the largest organ of -- of the human body, right?
A Yes.
Q But you -- you don't -- and -- and therefore there is a school of thought that says just like a kidney or a liver or other organ can breakdown and degenerate at end of life, there is a school of thought that says so can the skin, right?
A That's correct.
Q But you don't agree with that?
A That's correct.
Q True?
A Because there is no evidence whatsoever to support that theory.
Q Okay. Now, you reviewed Dr. Fullerton's deposition. We heard you testify about all of the things you don't agree with, right?
A A few, yes.
Q There is more. I'm sure there is. Um, and so when you reviewed the deposition you must have reviewed the exhibits that accompanied the deposition, including the articles; true?
A Yes.
Q And so when you consider --
MS. CLEMENT: Your Honor, may we be heard at sidebar? This is regarding a motion in limine.

THE COURT: Please.

(Sidebar conference was held.)

Q (By MR. REID) So, Doctor, one of the articles that was attached to Dr. Fullerton's deposition was entitled SCALE, which stood for Skin Changes At Life's End, right? You recall that?

A Correct, yes.

Q And -- and you -- I assume you reviewed and considered that article as you were finalizing your opinions to testify to here in court?

A Well, I don't know that I relied on that article, but I did actually get the consensus statement of this group that got together and came up with the Skin Care At Life's End, um, position paper, if you will. And -- and that's where I, um -- that's what I spoke of earlier when I said we are talking days and weeks.

And also if you read the -- the executive summary or the conclusions of the panel, it's like, we need research.

Q Okay.

A So...

Q So you did read and consider the SCALE, um, article in forming your opinions?

A Um, no. I didn't rely on it. I read it to understand better what Dr. Fullerton's position was. I was familiar with it too though because I had heard it, um, proposed in the National Pressure Ulcer Advisory Panel conference, and I had read other things about it. And I think I testified about this in my deposition, about a doctor who challenged,

um, one of the nurses who published a -- a -- a position, um, statement on skin failure and -- and that's what I rely on, yes.

Q Okay. I'm not asking you -- please pay attention to my question. I am not asking you whether you relied on it. You obviously read the article. You've just testified about that, right?

A Right.

Q And you considered the article, correct?

A Correct.

Q And you consider whether it supported your opinions or didn't support your opinions, correct?

A Um, well, not really. Um --

Q Did you just disregard everything that was said in this article, Skin Changes At Life's End?

A No. I read exactly what it said and the basis for saying it, and, um, the call for more research on it and the conclusion that it's inconclusive at the moment.

Q Okay. Now, I would ask you to take a look at Exhibit 435, please, and I will help the witness.

May I approach, your Honor?

THE COURT: Yes.

MS. CLEMENT: 435?

MR. REID: Yes.

(Joint Exhibit 435 was marked for identification.)

MR. REID: Pardon me? Sorry.

THE WITNESS: It's okay. I can -- can get it.

MR. REID: We will work together, how is that?

THE WITNESS: I can get it, if you want. I'm a pro at dealing with busted-up charts.

MR. REID: Thank you.

THE WITNESS: You have got to watch that now.

MR. REID: Okay. We are getting there. Okay.

Q (By MR. REID) I'm directing your attention to page 3 of -- of Exhibit 435. 003.

A Yes.

Q Okay. And this is the article that you read and considered, correct?

A Yes.

Q Okay. And this was an article -- this was a final consensus statement by 18 internationally recognized key opinion leaders, um, including clinicians, caregivers, medical researchers, concerning Skin Changes At Life's End, correct?

A Correct.

Q Okay. And then this consensus statement was then reviewed externally by 49 international distinguished reviewers, correct?

A Correct.

Q And in the abstract the consensus statement says, The skin is the body's largest organ and like any other organ is subject to a loss of integrity. It has an increased risk for injury due to both internal and external insults, correct?

A Correct.

Q The panel concluded that, Our current comprehension of

skin changes that can occur at life's end is limited; that SCALE process is insidious and difficult to prospectively determine; additional research and expert consensus is necessary; and contrary to popular myth, not all pressure ulcers are avoidable, correct?

A Correct.

Q Now, directing your attention to, um, page 4 of the article -- I'm not sure what the date stamp is. Probably 7.

A Yes.

Q Okay. And -- and in looking at the first paragraph of the third line in the consensus statement it says, End of life is defined as a phase of life when a person is living with an illness that will often worsen and eventually cause death, right?

A Right.

Q And the consensus was, This time period is not limited to the short period of time when the person is moribund, right?

A Right.

Q It is well accepted that during the end of life -- the end stages of life, any number of vital body systems, including the renal, hepatic, cardiac, pulmonary, or nervous systems, can be compromised to varying degrees and will totally cease functioning, right?

A Right.

Q And then in the next paragraph the consensus statement says, We propose that the skin, the largest organ of the body, is no different, and also can become dysfunctional

with varying degrees of resultant compromise, right?
A Correct.
Q It says, The skin is essentially a window into the health of the body, and if read correctly, can provide a great deal of insight into what is happening inside the body, right?
A Correct.
Q On, um -- then on page 6 of the article itself, um, the consensus statement says that, um, 69 noted wound care experts reviewed the article with a modified Delphi Method approach. Do you know what modified Delphi approach is?
A No.
Do you?
Q No. But it sounds important. Um --
A It sounds like researcher speak.
Q So statement number one is that, Physiologic changes that occur as a result of the dying process, days to weeks, may affect the skin and soft tissues and may manifest as observable changes in skin color, turgor, or integrity, or as subjective symptoms such as localized pain, right?
A Correct.
Q These changes can be unavoidable and may occur with the application of appropriate interventions that meet or exceed the standard of care, right?
A Correct.
Q Statement one?
A That is what it says, yes.
Q Going to statement 4 on page 7. Statement four is,

Skin changes at life's end are a reflection of compromised skin, reduced soft tissue perfusion, decreased tolerance to external insults, and impaired removal of metabolic waste, right?

A Yes.

Q On the -- in the second paragraph understatement 4, Skin changes may develop at life's end despite optimal care, as it may be impossible to protect the skin from environmental insults in its compromised state, right?

A Right.

Q These changes are often related to other cofactors including aging, co-existing diseases and adverse drug, um -- and drug adverse events, right?

A Right.

Q Statement number 6 is, Risk factors, symptoms and signs associated with SCALE have not been fully elucidated, but may include: Weakness and progressive limitation of mobility, right?

A That's what it says.

Q And weakness and progressive limitation of mobility, that's something that occurs with Alzheimer's disease, right?

A Not in the last days to weeks of life. It's already happened by then.

Q Okay. Suboptimal nutrition including loss of appetite, weight loss, cachexia and wasting, low serum albumin/pre-albumin, and low hemoglobin as well as dehydration is another risk factor for skin breakdown at

life's end, right?
A Those are risk factors for any time, yes.
Q Okay. And those also occur at end stages of Alzheimer's disease, don't they?
A It depends.
Q Okay. Um, diminished tissue perfusion, impaired skin oxygenation, decreased local skin temperature, mottled discoloration, and skin necrosis are also risk factors for skin breakdown, right?
A That's what this says.
Q Loss of skin integrity from any number of factors including equipment or devices, incontinence, chemical irritants, chronic exposure to body fluids, skin tears, pressure, shear, friction, and infections, those are all risk factors for skin breakdown at life's end, right?
A Well, those are the typical -- yes. Those are the typical risk factors.

And, you know, it's so interesting that "pressure" is buried under this long list when everyone knows that pressure is the number one cause of pressure ulcers. So that kind of is telling that they put it at the very end there is, like, what?
Q So you think that these researchers were being, um -- um, not being accurate in how they were putting forth their -- their findings in their consensus statement?
A Well, no. My -- my impression from this document -- which is dated October 2009 by the way and there has been no research or any publications that support these proposals,

and you notice they all say "may this", "could that", "might this", um -- that the final consensus is that they -- we need research, not that any of these things are true.

Q Okay. So couple of things I want to ask you about. One of them they talked about, um, exposure to bodily fluids as being a risk factor. Um, in fact, Mrs. Boice was incontinent, correct?

A At what time?

Q While she was at Emerald Hills she was incontinent?

A I don't know. It's not documented.

Q All right.

A She was not fully incontinent at the Palms, she was only occasionally incontinent.

Q Ms. Boice never developed a urinary tract infection at Emerald Hills, correct?

A That I don't know because they did a urinalysis and culture the day after she got to the nursing home and she had a urinary tract infection. So did she have that while she was at Emerald Hills? Probably.

Q In terms of assessments we -- you mentioned the Vigilan assessments, and you saw those Vigilan assessments as part of your review, right?

A Right.

MR. REID: Exhibits 68, 69 and 67. Um, can I pull those for the witness, your Honor?

THE COURT: Yes. These are exhibits that are in the binders, right?

MR. REID: They are.

THE COURT: Let's have her look at those, please.
MR. REID: Okay.
THE WITNESS: Unless you're not going to use it again. I don't know. Exhibit 60 --
MR. REID: Let's start at 67 and work forward.
(Discussions were had between attorneys.)
Q (By MR. REID) So Exhibit 67 through 70, those are Vigilan assessments that were provided to you and that you reviewed in forming your opinions in this case, correct?
A I reviewed them, yes.
MR. REID: Okay. Your Honor, I would move Exhibits 67 through 70 into evidence. Actually, I think 67 is in already.
THE COURT: Pages 1 through 9 on 67 have already been admitted. 68, 69 and 70 have not previously been admitted.
MR. REID: I would offer them.
THE COURT: Is there any objection, Ms. Clement?
MS. CLEMENT: I don't think there has been a foundation laid for them, but I don't have a problem.
THE COURT: Okay. So the answer is...
MS. CLEMENT: Yes. Go ahead.
THE COURT: Okay.
MR. REID: Thank you.
THE COURT: So to the extent there is anymore pages in 67, those are all in, 68, 69 and 70 are admitted.
(Joint Exhibits 67, 68, 69 and 70 were admitted into evidence.)
Q (By MR. REID) We don't have a lot of time so I'm not

going to put them up, but I want to confirm a few things, okay. Those are the Vigilan assessments that you testified weren't part of Ms. Boice's original chart when it was first provided to you, right?

A Correct. Or -- or the subsequent version either.

Q Okay. Those were -- you understand those were printed off of the computer system at Emeritus some time later, right?

A Correct.

Q Okay. And -- but -- but the Vigilan assessments, in particular 68 and 69, those are the kinds of assessments not -- and I'm talking in general, that when you're looking at an assisted living chart, those are the kinds of assessments you would be looking for, right?

A Correct.

Q And those are the kinds of assessments, not identical, but the kinds of assessments that you saw in the Palms and you were impressed with, right?

A Well, they are different in a number of aspects, but they are a type of assessment.

Q Okay. And in forming your opinions you rejected those, um, documents because basically you thought they were falsified, right?

A No, um, that's not specifically why. Um, my problem with them -- one of the main problems I have with them, and I've mentioned this already, is that they were never translated into care for Joan.

Q Okay. There was no documentation in the chart to show

it was translated into care for Joan Boice, right?
A Right. So it's in the computer, that's where it stays. What good is it? And the family didn't review it and sign off on it and didn't have an opportunity to add to it or question it.
Q All right. The one you're looking at has no signatures on it, does it?
A Right.
Q It was printed off of a computer two years after Ms. Boice left the community, right?
A Right.
Q I -- if you can help me out because I'm running out of time with you and there is a couple of things I want to finish up.
A Okay.
Q All right. First of all, Alzheimer's disease itself, um, it is an uncurable disease, right?
A Correct.
Q It will progress, right?
A Correct.
Q No -- there is no treatment that's going to stop Alzherimer's disease from progressing, correct?
A Correct.
Q And someone with Alzheimer's disease, if they get medical complications on top of that you would expect to see a quicker decline in their condition, right?
A Right.
Q One of those medical conditions might be something

like strokes; true?
A True.
Q Um, and in -- with regard to Joan Boice, when -- when someone is being transferred -- in this instance there were efforts to transfer her to a skilled nursing facility, right?
A Right.
Q And there were also discussions about possibly having her go on Hospice, correct?
A Yes.
Q And Dr. Awan was being reached out and asked for orders for both of those near the end, right?
A Right.
Q Um, and what you expect to see in an instance like with Joan Boice is a coordination of the efforts between the home health providers, the assisted living community, the family, and the doctor, right?
A Yes.
Q You testified Thursday that there was no, um -- you -- you didn't think that there was an adequate effort to respond to problems raised by Mary Kasuba, correct?
A Yes.
Q But you did see when you reviewed the -- the Department of Social Services documents that there was an annual survey done at Emerald Hills on April 10th of 2008, correct?
A Yes.
Q Okay. And, um, that survey made no mention or any

finding of in -- in, um -- insufficient staffing, did it?
A You're correct.
Q And it didn't have insufficient training, correct?
A Right.
Q Um, and you are familiar -- as a consultant for the State you are familiar with a -- the evaluator manual and the, um, guide to surveyors, correct?
A Correct.
Q I would like you to take a look at Exhibit 450, and I'll grab that for you.
Are you looking at Exhibit 450, Dr. Locatell?
(Joint Exhibit 450 was marked for identification.)
THE WITNESS: Yes.
Q (By MR. REID) And -- and what is Exhibit 450?
A This is page 60 of the evaluator manual residential care facilities for the elderly which contains all of the Title 22 regulations.
Q Okay. And this is a document that the Department of Social Services prepares to help its -- to -- to tell its, its employees how to do their job in interpreting the regulations, correct?
A Correct.
Q And you're aware -- you must be aware of the direction that's given to the employees of the department when it comes to checking the level of staffing when they, um, enter communities, true?
A Correct, that's the policy.
Q Okay. And Exhibit 450 is the policy in that regard

with -- with what the surveyors were told to do, right?
A Right.
MR. REID: I would offer into evidence, your Honor, Exhibit 450.
MS. CLEMENT: I --
THE COURT: I have one page.
MR. REID: It's just one page.
MS. CLEMENT: Yeah.
THE COURT: Okay.
MS. CLEMENT: Your Honor, I would object to this coming in. It's incomplete. It's dated January 2002. There is no foundation for it.
THE COURT: We can take this up at a later time. Why don't you move on?
MR. REID: Yes.
Q (By MR. REID) So as someone that consults with the department of -- the Department of Social Services, um, are you aware that when surveyors are, um, entering buildings, assisted living buildings, that they are told that the ratio of on-duty staff to residents should be observed during site visits?
A Yes. I mean, I am not aware of it, but I know that is what this document says.
Q So you don't know whether surveyors are supposed to consider staffing levels every time they go into a building?
A Well, according to this they are.
Q Okay. Are you aware that surveyors are told every time they go into a building they should, um, consider the

personnel report, the personnel records, the pre-placement appraisal information, the appraisals and needs and service plans of the residents and other documents as appropriate to determine if a facility has sufficient support staff to meet the requirements of the staffing regulations?

A Yes, assuming that the updated manual has the same language.

Q Okay. So, in other words, when surveyors go in, one of the things they are always supposed to look at is the sufficiency of the staff, right?

A Right.

Q I'm almost done.

When you reviewed the Department of Social Services record for Emerald Hills around the time frame that Ms. Boice lived there, you didn't see any deficiencies related to staffing, did you?

A No, I did not.

Q You didn't see any deficiencies relating to training, did you?

A That's correct.

Q And you didn't see any, um, reports of suspected elder neglect with regard to Joan Boice, correct?

A Correct.

Q Now, I want to ask you one final thing, and that is your review. You were provided the photos that we saw in mid-December of 2008, correct, Dr. Locatell?

A That's correct.

Q And you testified in your deposition that the wound on

the hip that we saw, in your mind you thought it was due to poor care, substantial -- substandard care, neglect, right?

A That's not accurate.

What I said was -- when I looked at the photographs I said, I would like to look at the records because that ischial wound -- not the hip -- the ischial wound is one that is usually preventable, and I need to look at the records to see if in that individual case was it preventable. The only way you can make the determination if it's preventable or not is to look at the documentation about what was provided to prevent it.

Q I remember you testified to that. You testified that you needed the documentation to figure out whether the -- the wound -- the other wounds, the foot wounds, were preventable and that would be based on whether, um, um, there was some evidence that the patient was refusing or some other medical explanations, right?

A Correct. And the ischial wound also.

MR. REID: Okay. I would ask permission, your Honor, to read from the witness's deposition page 39, line 21 through 40, line 3.

MS. CLEMENT: Sorry, Judge. Page 39, line -- I'm sorry.

THE COURT: Line 21 through 40, line 3.

MS. CLEMENT: Thank you. Go ahead.

MR. REID: Okay. Thank you.

Q (By MR. REID) When we took your deposition on September 7th, 2012, you were asked:

Question: Okay. Getting back to the four wounds that you identified in those photographs. I think you already told me that the first wound you felt was -- there was no clinical basis for it, correct?

Answer: Correct. Just based on the fact of the wound itself and other characteristics in the photograph, that suggested to me that it was due to poor care, substandard care, neglect.

A That's correct.

Q And you didn't report suspected neglect as a mandated reporter in December of 2008, did you, Dr. Locatell?

A That's correct.

Q And if you had reported suspected neglect in December of 2008, then investigators from the State of California would have gone into Emerald Hills and they would have independently investigated the quality of the care delivered to Ms. Boice, correct?

A One would assume.

Q And they would have confirmed the availability of records relating to her care, right?

A Correct.

Q And they would have, um, confirmed whether the staffing levels were appropriate, right?

A If they did their jobs, that's correct.

Q Okay. And is the reason you didn't report suspected neglect in December of 2008 when you saw the picture because you were working with Ms. Clement at that time?

A No. And, in fact, that would maybe benefit

Ms. Clement if I had done that. The reason that --
Q Or perhaps it might have benefited Emerald Hills, right?
MS. CLEMENT: Your Honor, she didn't finish answering her question.
THE COURT: She did answer the question. You are free to follow-up with her.
MS. CLEMENT: Okay.
THE WITNESS: It could have. It could have but --
MR. REID: Right.
THE WITNESS: -- I would say, you know, looking back on it at the time I was waiting to get the Emerald Hills records to evaluate whether it was avoidable or not. And based on the photograph I suspected it was, but I didn't have the documentation until I got the records.
Q (By MR. REID) Right. So as Ms. Clement's consulting expert witness since 1997, you wanted to see the records to help Ms. Clement figure out how to bring her case rather than report the neglect -- the suspected neglect to the State of California?
A No. It's not an either or proposition the way you've posed it.
Q Well, mandated reporting isn't an either or proposition, is it?
A And I had lacked information to suspect it at that time.
Q So did -- so the photo -- was it -- there is a lot of documents missing from this chart, aren't there?

A Yes, I assume. Unless they never existed. We don't know.
Q And do you know where those documents went?
A No.
Q You've reviewed cases where you found out -- you had discovered that the provider, the licensee, manufactured documents, right?
A Yes.
Q You've seen cases where providers have recreated assessments, they have recreated care plans, they have recreated ADL sheets, right?
A Yes.
Q That didn't happen in this case, did it?
A Not to my knowledge.
MR. REID: Those are all of the questions I have. Thank you.
THE COURT: Ms. Clement, we are at our break time.
MS. CLEMENT: Okay.
THE COURT: Short break, ladies and gentlemen, because we need to finish with this witness. Please be back ready to go at a quarter to. Leave your notebooks on the chairs. Remember the admonitions.
We are in recess.

(Recess.)

(Court reporter switch.)

---oOo---

(The following proceedings were then had in open court, in the presence of the jury.)

THE COURT ATTENDANT: Come to order. Department 45 is once again in session. The Honorable Judge Judy Hersher presiding.

You may be seated.

MS. CLEMENT: Thank you, your Honor.

REDIRECT EXAMINATION

BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of the Plaintiffs:

Q. Of the one hundred or more cases that you reviewed for me of suspected abuse or neglect, how many of those cases have you -- since '97 or '98, how many of those cases have you actually recommended that I pursue?

A. I would say maybe 20.

Q. With regard to the Kaiser Home Health nurse -- nurses, September -- or, excuse me, December 1st, 2008, was that the first time, to your understanding, that Charlene Farrack, the home health care nurse, took off all of Mrs. Boice's clothes and examined her entire body?

A. Yes.

Q. And that was after a caregiver had told her that she had pressure ulcers on other places?

A. Correct.

Q. With regard to the dressing orders, you indicated those were for every three days; is that true?

A. Yes.

Q. Was there any exception to that?

A. Well, the standard is for any dressing that the person doing the treatment can redo the dressing if it falls off, or it gets wet, or it gets soiled in some way. So you're allowed to redo it. It's supposed to be every three days. But if it needs it sooner, you have the authority to do it sooner.

Q. And the staffing analysis that you did, you provided that table to me, true?

A. Yes.

Q. And the discovery that you relied upon, in addition to those two documents that Mr. Reid provided you, you also looked at Emeritus' sworn testimony as to the number of residents in the building on each day that Mrs. Boice was there, true?

A. Correct.

Q. And you also looked at their sworn testimony about how 70 percent of the people in the building were at the highest level of care in the Memory Care Unit?

A. Correct.

Q. Was Mrs. Boice terminal when she was admitted to Emerald Hills on September 12th?

A. No.

Q. On October 14th, was she terminal?

A. No.

Q. November 3rd?

A. No.

Q. With regard to this Skin Care at Life's End (sic) article, Exhibit 435, on page 15, you were trying to tell

the jurors about the conclusion of that article.

Could you tell the jurors what the author stated.

A. SCALE panel members are in agreement that there -- (coughing), excuse me -- are observable changes in the skin at the end of life. Our current understanding of this complex phenomenon is limited. And the panel concludes that additional research is necessary to assess the etiology of SCALE.

Q. Have there been any further, to your understanding, studies that support this?

A. None.

Q. That article also talked about -- and Mr. Reid read aloud -- about residents who -- or patients who even have optimal care could still have skin breakdown.

Did Mrs. Boice have optimal care at Emeritus?

A. No.

Q. And the April 2008 survey, which was Exhibit Number 220 --

MR. URIAS: 222.

MS. CLEMENT: Excuse me?

222. Room 222.

Q. (By MS. CLEMENT) Did the surveyor indicate that she did a staffing analysis of the entire building?

A. No.

MS. CLEMENT: No further questions.

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RECROSS-EXAMINATION

BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the Defendant:

Q. Of the cases that -- that you and Ms. Clement have pursued was one that went to trial in 2006, right?

A. Correct.

Q. You were the expert for Ms. Clement when she sued Sutter Roseville Medical Center, right?

A. Actually, I believe it was Sutter General Hospital.

Q. Okay.

MR. REID: I would like to -- I don't have an extra copy. I have -- I have something I'd like to show the witness to see if it refreshes her recollection. I'm showing it to counsel now.

(Pause.)

MS. CLEMENT: No. I have an objection to that.

THE COURT: Is this going to be used to refresh her recollection?

MR. REID: Right.

THE COURT: Go ahead.

MS. CLEMENT: Your Honor, can we be seen at sidebar?

THE COURT: Yes.

(Whereupon an unreported bench conference was then had in open court between the Court and counsel.)

MS. CLEMENT: Thank you, your Honor.

THE COURT: Counsel, you can show it to her.

MR. REID: Thank you.

Q. (By MR. REID) I'm going to show you a document.

I'm going to ask you to read it to yourself and then tell us if it refreshes your memory as to the defendant in that lawsuit that went to trial.

(Pause.)

THE WITNESS: It's not accurate.

Q. (By MR. REID) Okay. The question is: Does this document refresh your memory as to who the defendant was in the lawsuit you testified in in 2006?

A. No.

Q. Okay. Have you ever testified for Ms. Clement in a matter against any facility, to your knowledge, that was owned and/or operated by Sutter Health?

A. Yes.

Q. What case was that?

A. That case was -- the plaintiff's name was Constance Dilley.

Q. Okay. And what year did you testify in a case involving a defendant that was owned or operated by Sutter Health?

A. That was January, 2006. In trial. Gave a deposition in November of 2005.

Q. Okay. And in that case, you testified that the defendant failed to reposition the patient in bed and she developed bedsores?

A. A bedsore, yes.

Q. A pretty large bedsore from what I can tell.

A. Yes.

Q. And the lawsuit was successful. You got -- there

was a verdict for the plaintiff, correct?
A. Correct.
MR. REID: The other thing I'd ask to do, your Honor, since counsel referenced Exhibit 435 on redirect, I would offer Exhibit 435 into evidence.
THE COURT: Evidence Code Section 721 does not permit it to be introduced into evidence.
MR. REID: Very good, your Honor.
Then I have no more questions.
THE COURT: All right.
MS. CLEMENT: None, your Honor.
THE COURT: Ladies and gentlemen, do you have any questions for our witness?
Come on up.
(Whereupon an unreported bench conference was then had in open court between the Court and counsel.)
THE COURT: All right. Dr. Locatell, I don't know if you've experienced this before, but we allow our jurors to ask questions. So I'm going to ask you the question, and if you would please turn and respond to the jury.
You may note that from time to time it seems like some questions are being -- you've already answered the question or answered it in part. Please go ahead and answer it again anyway. Okay?
THE WITNESS: Okay.
THE COURT: If a person has Stage III or IV pressure ulcers and they are not considered fragile, can the bedsores be operated on in order to remedy their situation?

THE WITNESS: Yes.

THE COURT: This juror wants you to please refresh his or her memory.

Can you recognize or tell us about how many weeks or months it takes to develop a Stage I, II, III, IV bedsore.

THE WITNESS: Yes. Well, we don't have good medical research that tells us the answer to that question because we can't do these experiments on people, leave someone laying in one position for two hours, four hours, eight hours, 24 hours and see what happens to the skin. So all we can do is look at a pressure sore at one point in time and work backwards and see, *When does it appear that the pressure injury occurred?* Because there had to have been some pressure that caused the wound.

Now, a Stage I, it's just the very top surface of the skin. And in some people who are really compromised, you might get a Stage I from laying in the same spot or sitting in the same spot for only a few hours. To get Stage IV, you've got full thickness destruction of the tissues down to the supporting structure underneath, whether it's muscle, joint, bone. That takes a lot of pressure over time.

So, you know, again, from clinical experience, the analogy is -- or you see someone who spent the whole night, 24, 36 hours on the floor, they truly couldn't get up, they fell and they couldn't get up, and then we see what happens to their skin over time. And they show up at the emergency room -- and I can think of a patient I saw in the emergency

room who this happened to -- and it looks like a rug burn. But over the course of four days, five days, to a week, it became obvious that this whole skin was dead, and it was dead the full thickness of the skin.

So it takes time for those changes to evolve, to where you see dead tissue in the skin. And that time is variable. But it takes days, if not a week, if not more. So that's between Stage I and Stage IV.

Stage II can happen (snaps fingers) in an instance. If somebody drags you across the bed and creates a shearing force or a friction and kind of disrupts the next layer of the skin, you can get a Stage II. Because that's just partial thickness, like a scrape.

Stage III, again, the full thickness of the skin and into the subcutaneous tissues has been damaged. That generally takes many, many hours, if not at least a whole day of unrelieved pressure, or it could be eight hours a day for three days in that same position. So it's pressure over time is what disrupts the blood flow. And the longer the blood flow is disrupted, the more tissue dies and the more severe the pressure sore is.

THE COURT: Since Joan was incontinent at some point at Emerald Hills, which kept areas of her body damp or wet, shouldn't she have had care for her pressure sores every day?

THE WITNESS: Yes. When someone is incontinent or wet, there should have been someone washing her skin. And that's the standard for incontinence care. You have to

wash the urine off the skin and dry the skin. And you may apply moisture barrier, like A&D, like you would an infant. Now, if someone is giving incontinence care, they have an opportunity to look at the skin. And, obviously, if there's a pressure sore in the area, then something needs to happen with that.

Now, in this case, there was no report of any pressure sore in her -- in that region where it could get wet, which is the right ischium, the right ischial wound, until November 30th. So, obviously, there's no treatment going on even though -- were they even providing incontinence care --

THE COURT: I think we're going beyond the question.

THE WITNESS: Okay. Sorry.

THE COURT: Are pressure ulcers able to be fully healed?

THE WITNESS: Yes. Relieve the pressure and they will heal.

THE COURT: I'm -- I have a question from a juror, and I'm not entirely sure, given the way this question is written, that I'm asking the right question.

So whichever juror wrote this question, if I'm not getting it right, raise your hand and help me figure this out. Okay?

We've heard that staff at Emerald Hills would call a resident's doctor to change a diagnosis -- or to potentially change a diagnosis from "dementia" to "mild cognitive impairment."

In your opinion, would a competent doctor need to have had someone review the definitions in light of the patient's status in order to make that change?

I think that's the question.

THE WITNESS: Yes.

THE COURT: Is a med tech allowed, under Title 22, to provide wound care if he or she is trained by a nurse?

THE WITNESS: No.

THE COURT: To your knowledge, with respect to the SCALE article that you were talking about, did it receive any other medical journal attention?

THE WITNESS: No, not to my knowledge.

THE COURT: Will you get paid more if Miss Clement wins her lawsuit, as opposed to if she loses her lawsuit?

THE WITNESS: No.

THE COURT: What year did the rule go into effect requiring training before you could become a med tech?

THE WITNESS: Well, the rule in the Title 22 regulations doesn't say anything about "med tech." It just says "training." And it says the facility can't administer medications; they can only assist.

THE COURT: Do you know the year that that rule went into effect, or regulation?

And if you don't know, you can say you don't know.

THE WITNESS: I don't know. But it was quite a bit before 2008.

THE COURT: Okay. Could you review with us, if you recall, when the Kaiser doctor noted weakness in

Mrs. Boice's right leg.

THE WITNESS: The first time it was noted was in September of 2006.

THE COURT: And when did Mrs. Boice arrive at Emerald Hills?

THE WITNESS: September, 2008.

THE COURT: How long was Mrs. Boice at the skilled nursing care facility before she died?

THE WITNESS: About two-and-a-half months.

THE COURT: Is it your opinion that Kaiser people should have inspected Mrs. Boice's body more closely since they were qualified to inspect and treat her wounds?

THE WITNESS: Yes.

THE COURT: If the family was informed of her skin conditions, shouldn't the family have taken her to the doctor for further treatment?

THE WITNESS: Yes. And -- although, when they were informed, they did take her to the doctor. And that was November 3rd. They were informed November 4th. They took her to the doctor. But I didn't see any evidence that they notified the family of the other wounds that came about or were noticed November 30th and December 1st.

THE COURT: Do you believe the family has some responsibility for the lack of medical attention that occurred with respect to Mrs. Boice?

THE WITNESS: No.

THE COURT: Before this case, have you ever been asked to consider care received by a resident at any

Emeritus facility?

THE WITNESS: No.

THE COURT: Do large doses of morphine slow down the healing process?

THE WITNESS: No.

THE COURT: Would your opinion regarding standard of care be different if you were being paid by the defense rather than by the plaintiff?

THE WITNESS: No.

THE COURT: What, if any, sections of Title 22 cover funding for facilities?

THE WITNESS: Just a general statement that the licensee has to have funds on hand and backup funds and certain amounts of food.

THE COURT: Do you believe that Mrs. Clement provided you with all of the documents necessary for review regarding The Palms, or just selectively provided you documents?

THE WITNESS: No. She provided the entire Palms chart.

THE COURT: How many errors have you made during documentation on a chart over your professional career?

THE WITNESS: I do not know. I'm sure there have been some.

THE COURT: Assuming that Joan Boice had had a stroke while she was at Emerald Hills, what, if anything, should have changed about her care as a result of the stroke?

THE WITNESS: There should have been more time devoted to her care if she had a stroke. She would have needed much more assistance, including to stand up, to move around. She would have needed just heavy -- actual physical care to move her around, which is what apparently they were trying to do.

THE COURT: Does the standard of care require that a person who is bedridden be repositioned every so number of hours?

THE WITNESS: Yes.

THE COURT: What is that?

THE WITNESS: Every two hours is the standard.

THE COURT: To your knowledge, and based on the review of the documents you received, did Joan Boice have any dermal ulcers while she was at The Palms?

THE WITNESS: No, she did not.

THE COURT: This juror is recalling the questions regarding the SCALE document and the statement that was read to the jury that the skin is, quote, "a window into the health of the body," close quote.

From the evidence that you have reviewed, what, if anything, did you learn about Joan Boice's major internal organs, their status?

THE WITNESS: Her skin condition told me nothing about her internal organs or the functioning of any of her organs. Although, I have evidence that her organs were functioning well. That includes her kidneys, her heart, her liver, etcetera.

THE COURT: I guess the question was, what -- let me back up.

Did you review any medical records of Joan Boice?

THE WITNESS: Yes.

THE COURT: What were those records?

THE WITNESS: The records were Kaiser Hayward, going back to 2006, I believe. Kaiser Roseville, Dr. Awan. Kaiser Home Health. And Foothill Oaks. Those are the records I would consider to be medical records.

THE COURT: Okay. Then asking the question the way this juror phrased it: What condition were Joan Boice's major internal organs in at the time she entered Emerald Hills?

THE WITNESS: They were all normally functioning.

THE COURT: Were there any medical records that talked about after, other than the dermal ulcers?

THE WITNESS: Yes. There was laboratory tests for kidney, liver, blood, before and after. And then there were clinical examinations that showed she did not have heart failure or lung failure. The only failure she had was the brain, and that was related to the underlying Alzheimer's disease.

THE COURT: Miss Clement, do you wish to follow up?

MS. CLEMENT: Yes. Just a few questions, your Honor.

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FURTHER REDIRECT EXAMINATION

BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of the Plaintiffs:

Q. You read the testimony of Jenny Hitt, caregiver?

A. Yes.

Q. Now, she testified that the -- she was treating the skin breakdown on Mrs. Boice's bottom, or ischium, and on her feet for weeks before Mrs. Boice left.

Do you recall that?

A. Yes.

Q. And she also testified that she had written, and others had written, many care alerts about Mrs. Joan Boice, true?

A. Correct.

Q. Would those -- having that information help you, if that had actually been provided by Emeritus, help you in reaching your opinions in the case?

A. I don't know. I would guess they would.

Q. When Jenny Hitt first found those pressure ulcers and was treating them and writing those care alerts, what was Emeritus required to do at that point in time?

A. The nurse Peggy Stevenson was required to review those care alerts and to conduct a full assessment, make sure that the medical care and an appropriately skilled professional was involved, according to Title 22, and depending on the stage of the ulcer, immediately arrange for her placement elsewhere, because Stage III is prohibited in assisted living.

Q. Were you provided with all the records from every healthcare provider that Joan Boice had?
A. No. Well, I don't have any from before the Kaiser Hayward records. But other than that, yes.
Q. Okay. And the question about a competent doctor needed to know the definitions, are those definitions for "mild cognitive impairment" and "dementia" right on the physician's 602 form when they're filling it out?
A. They are now. I don't know that they were in 2008.
Q. Okay. Well, if they were on Joan Boice's 602 that Dr. Awan filled out in June of 2008, would that confirm it for you?
A. Yes.
Q. Okay. And did Kaiser cause those pressure ulcers that Mrs. Joan Boice developed?
A. No.
MS. CLEMENT: Thank you.

FURTHER RECROSS-EXAMINATION

BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the Defendant:
Q. In addition to Jenny Hitt's testimony, you also received the deposition testimony of multiple caregivers at Emerald Hills that were working in the Memory Care Unit and providing care to Ms. Boice and the other residents, true?
A. Yes.
Q. And do you recall seeing the testimony of Maritza Morales, a caregiver?
A. Yes.

Q. And do you recall her testifying that she -- she recalled that when Miss Boice got to Emerald Hills she could walk with a walker?
A. Yes. I don't recall the specific details, but...
Q. And do you recall Miss Morales testifying that in the Memory Care Unit they would have activities, such as, exercising, bingo, go out for walks, and different types of games?
MS. CLEMENT: Objection.
THE WITNESS: Yes.
MS. CLEMENT: This is exceeding the scope at this point, I think.
THE COURT: Sustained.
MR. REID: Your Honor, I would ask -- since we have a few extra minutes, I'd ask for permission to call the witness on direct for these purposes then.
THE COURT: How much have you got?
MR. REID: I have probably five minutes worth of questions on this.
Your Honor, that's fine. I'll withdraw.
Q. (By MR. REID) Do you have -- do you have a recollection of multiple caregivers testifying about providing care to Ms. Boice?
A. Yes.
Q. And you have recollection of multiple caregivers providing testimony about knowing they had to reposition Ms. Boice?
A. That, I don't recall.

Q. Do you recall whether you saw multiple -- testimony from multiple caregivers about a variety of activities that would take place daily in the Memory Care Unit?
A. I don't know about variety, but there were some activities that people talked about doing.
Q. Have you -- in stating your opinions here, are you aware of any testimony that a witness observed the care staff at Emerald Hills spending hours with Ms. Boice in her room?
A. No.
Q. Would that be consistent with your opinions in this case?
A. Someone spent hours with her at any one time? It's not inconsistent.
MR. REID: That's all the questions I have. Thank you.
THE COURT: Anything else, Miss Clement?
MS. CLEMENT: No, your Honor.
THE COURT: All right. May we excuse this witness?
MS. CLEMENT: Yes.
MR. REID: Yes, your Honor.
THE COURT: Thank you very much. You're excused.
THE WITNESS: Thank you.
THE COURT: Who is our next witness?
MS. CLEMENT: Eric Boice, your Honor.
THE COURT: Terrance, can I give you this.
Mr. Boice, as you've observed, if you would remain standing when you get to the witness stand, raise your